



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2020

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2020-16641

Dear Mr. Entsminger:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 834159 (Ref. No. 820516-1).

The Travis County Purchasing Office (the "county") received a request for information pertaining to the current security guard services contract with the county, including any contract modifications, the winning proposal, and evaluation documents. Although the county takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Allied Universal Security Services; Smith Protective Services, Inc. ("Smith"); and Vets Securing America. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Smith. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the remaining third parties explaining why the submitted information should

not be released. Therefore, we have no basis to conclude the notified third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest either of the remaining notified third parties may have in the information.

Smith asserts some of the submitted information is subject to section 552.110 of the Government Code.<sup>1</sup> Section 552.110(b) states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

*Id.* § 552.110(c). We note section 552.0222(b) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Smith asserts the information it indicated consists of trade secrets and commercial or financial information subject to section 552.110. Upon review, we find Smith has demonstrated its customer information constitutes trade secrets. Accordingly, to the extent the customer information is not publicly available on Smith’s website, the county must withhold Smith’s customer information under section 552.110(b) of the Government Code.<sup>2</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. *See id.* Further, we find Smith has failed to provide specific factual evidence demonstrating any portion of the rest of the information

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<sup>1</sup> We note the Eighty-sixth Legislature amended section 552.110 effective January 1, 2020. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Accordingly, we understand Smith to raise sections 552.110(b) and 552.110(c) for the information at issue.

<sup>2</sup> In this event, our ruling is dispositive of this information and we need not address your remaining argument against its disclosure.

at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(b) or 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation *submitted to a governmental body* by a vendor, contractor, potential vendor, or potential contractor *in response to a request for a bid, proposal, or qualification* is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a) (emphasis added). Additionally, we note sections 552.0222(b) and 552.1101(b) list certain types of information to which section 552.1101(a) does not apply. *See id.* §§ 552.0222(b), .1101(b). Upon review, we find portions of the information at issue are subject to section 552.0222(b) or section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* Additionally, we find Smith has failed to provide specific factual evidence demonstrating any portion of the rest of the information at issue is subject to section 552.1101(a). Therefore, the county may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between an individual and a governmental body protected under common-law privacy). Upon review, we find a portion of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the county must withhold discernible license plates and the information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the county must withhold insurance policy numbers under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

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<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the customer information is not publicly available on Smith's website, the county must withhold Smith's customer information under section 552.110(b) of the Government Code. The county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold discernible license plates and the information we marked under section 552.130 of the Government Code. The county must withhold insurance policy numbers under section 552.136 of the Government Code. The county must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/be

Ref: ID# 834159

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)