



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2020

Mr. Michael Phelps  
Senior Paralegal  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2020-16760

Dear Mr. Phelps:

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# 833996 (Ref. No. 20-2521).

The Harris County Appraisal District (the "district") received a request for specified district records for a defined time period. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of their rights to submit arguments stating why their 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 Bettencourt Tax Advisors ("BTA"); DuCharme, McMillen & Associates, Inc. ("DMA"); Duff & Phelps, LLC ("Duff"); Gary E. Ellison, P.C. ("Ellison"); Lindley Law Firm, PLLC ("Lindley"); Office of Louis F. Rothermel ("Rothermel"); Novotny & Company ("Novotny"); Rainbolt Property Tax Service, LLC ("Rainbolt"); and Shum & Associates ("Shum").<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered

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<sup>1</sup> We note Shum makes no arguments against disclosure of its information at issue and raises no exceptions to disclosure under the Act.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

We note 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has 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 district may not withhold any portion of the submitted information related to those third parties on the basis of any proprietary interest they may have in the information.

Next, we note Duff seeks to withhold information not submitted to this office by the district. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the district, this ruling does not address this information and is limited to the information submitted as responsive by the district.<sup>3</sup>

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although the district argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110 of the Government Code.

Next, we understand DMA and Duff assert portions of their information were supplied with the expectation of confidentiality. Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the

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letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup> As we are able to make this determination, we need not address Duff's arguments against disclosure of this information.

information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

BTA, Ellison, and Novotny assert section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, BTA, Ellison, and Novotny have failed to direct our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code.

Duff raises section 552.102 of the Government Code to except from disclosure its personnel information. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 regarding “information in the personnel file of *an employee of a governmental body*” is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code (emphasis added). *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Section 552.102 is designed to protect the privacy of employees of a governmental body, not of private entities doing business with a governmental body. Open Records Decision No. 192 at 4 (1978). As no personnel files of employees of the district are at issue here, section 552.102 does not apply. The district may not withhold any information from disclosure under section 552.102 of the Government Code.

Duff raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if *a governmental body* demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code 552.104(a). Therefore, we do not address Duff’s arguments under section 552.104 of the Government Code.

Duff also raises section 552.105 of the Government Code, which excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

*Id.* § 552.105. We note section 552.105 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 564 at 2 (1990) (statutory predecessor to section 5 52.105 designed to protect governmental body's planning and negotiating position with respect to particular transactions), 357 at 3 (1982), 310 at 2 (1982) (statutory predecessor to section 552.105 protects information relating to the location, appraisals, and purchase price of property to be purchased by governmental body for public purpose); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). As the district does not raise section 552.105, we find this section does not apply to the submitted information. *See* ORD 564 (governmental body may waive statutory predecessor to section 552.105). Accordingly, the district may not withhold any of the submitted information on this basis.

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.

Gov't Code § 552.1101(a). Duff generally asserts disclosure of some of its information is exempt from disclosure under section 552.1101. Upon review, however, we find Duff has failed to provide the specific factual evidence necessary to withhold any of the information at issue under section 552.1101(a) of the Government Code, and the district may not withhold it on that basis.

Duff raises section 552.117 to except from disclosure its personnel information. Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of specified categories of individuals. *See id.* § 552.117. We note section 552.117 applies only to records that a governmental body is holding in an employment capacity. As no information pertaining to employees of the district is at issue here, section 552.117 does not apply. Therefore, the district may not withhold any portion of Duff's information on that basis.

Section 552.110(b) of the Government Code states "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). BTA, DMA, Duff, Ellison, Lindley, Novotny, Rainbolt, and Rothermel argue their information consists of trade secrets subject to section 552.110(b). Upon review, we find BTA, DMA, Duff, Novotny, and Rothermel have demonstrated portions of the information at issue constitute trade secrets. Therefore, the district must withhold the customer information of each of these third parties under section 552.110(b) of the Government Code; however, to the extent the customer information is publicly available on these third parties' websites, it may not be withheld under section 552.110(b).<sup>4</sup> However, we find BTA, DMA, Duff, Ellison, Lindley, Novotny, Rainbolt, and Rothermel have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). BTA, DMA, Duff, Ellison, Lindley, Rainbolt, and Rothermel argue some of the remaining information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find BTA, DMA, Duff, Ellison, Lindley, Rainbolt, and Rothermel have failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

In summary, the district must withhold the customer information of BTA, DMA, Duff, Novotny, and Rothermel under section 552.110(b) of the Government Code; however, to the extent the customer information is publicly available on these third parties’ websites, it may not be withheld under section 552.110(b) of the Government Code. The district must release the remaining information.

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,

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/be

Ref: ID# 833996

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

9 Third Parties  
(w/o enclosures)