



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2020

Ms. Cynthia Tynan
Assistant General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-17611

Dear Ms. Tynan:

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# 835939 (OGC# 197049).

The University of Texas Southwestern Medical Center (the "center") received a request for pricing and delivery schedules pertaining to a specified request for proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of TigerConnect, Inc. ("Tiger") and Vocera Communications, Inc. ("Vocera"). Accordingly, you state, and provide documentation showing, you notified Tiger and Vocera of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from Tiger and Vocera. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Vocera seeks to withhold information not submitted to this office by the center. By statute, this office may only rule on the public availability of information

¹ We note the center sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

submitted by the governmental body requesting the ruling. *See* Gov't Code § 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 center, this ruling does not address this information and is limited to the information submitted as responsive by the center.

Section 552.110(b) of the Government Code 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Vocera argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Vocera has demonstrated a portion of its information constitutes trade secrets. Accordingly, the center must withhold the information we marked under section 552.110(b) of the Government Code.² 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(b). Additionally, we find Vocera has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the center 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 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Tiger and Vocera argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, 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(c). Additionally, we find Tiger and Vocera have failed to provide

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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

(a) Except as provided by Section 552.0222, information 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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Tiger generally asserts disclosure of some of its information is confidential under section

552.1101. Vocera also asserts disclosure of some of its remaining information would reveal an individual approach to staffing, processes, discounts, and pricing and give advantage to a competitor. Upon review, 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 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Tiger and Vocera have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the center may withhold the information we marked under section 552.110(b) of the Government Code. The center 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/mo

Ref: ID# 835939

Enc. Submitted documents

c: Requestor
(w/o enclosures)