



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2020

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2020-18445

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# 836790 (OGC# 197204)

The University of Texas at Austin (the "university") received a request for a specified contract. Although you take 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 IMG College, LLC ("IMG"). Accordingly, you state you notified IMG of the request for information and of its right to submit arguments to this office as to why the submitted information 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 comments from IMG. We have considered the submitted arguments and reviewed the submitted information.

IMG raises section 552.110 of the Government Code for the submitted information.¹ Section 552.110(c) of the Government Code provides as follows:

¹ Although IMG cites to former sections 552.110(a) and 552.110(b) of the Government Code, 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 IMG to raise current sections 552.110(b) and 552.110(c) its information.

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].

Gov't Code § 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). IMG argues the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find some of the submitted information is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find IMG has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the submitted information under section 552.110(c) of the Government Code.

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, as noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). IMG argues the submitted information consists of trade secrets subject to section 552.110(b). Upon review, we find some of the submitted information is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Additionally, we find IMG has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information is a trade secret. Therefore, the university may not withhold any of the submitted information under section 552.110(b) of the Government Code. The university must release the submitted 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/mo

Ref: ID# 836790

Enc. Submitted documents

c: Requestor
(w/o enclosures)