



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Veronica Van Horn
Legal Services Coordinator
County of Galveston
722 Moody Avenue, 2nd Floor
Galveston, Texas 77550

OR2020-18983

Dear Ms. Van Horn:

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# 837688.

The Galveston County Purchasing Agent (the "county") received a request for certain proposals submitted in response to a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of the following third parties: Avero Advisors; Baker Tilly Virchow Krause, LLP; Mindboard, Inc. ("Mindboard"); Plante & Moran, PLLC; Sierra Consulting, Inc.; ThirdWave Corporation; and True North Consulting Group, LLC. Accordingly, you state, and provide documentation demonstrating, the county notified these interested third parties of the request for information and of their 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 Mindboard. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the county may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

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 disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(c). Mindboard asserts some of its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Mindboard has demonstrated its client reference information, which we marked, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent it is not publicly available on Mindboard’s company website, the county must withhold the client reference information we marked under section 552.110(c) of the Government Code.¹ However, to the extent such information is publicly available on Mindboard’s company website, we find the county may not withhold the client reference information we marked under section 552.110(c). Additionally, we find Mindboard has 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 county may not withhold any portion of the remaining information at issue under section 552.110(c) of the Government Code.

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.

¹ In that instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Id. § 552.110(a). Mindboard argues some of its remaining information at issue consists of trade secrets subject to section 552.110(b). However, to the extent Mindboard's client reference information is publicly available on its website and not excepted from disclosure under section 552.110(c), the county may not withhold such information under section 552.110(b) of the Government Code. Additionally, we find Mindboard 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 county may not withhold any portion of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.136(b) 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 government body is confidential."² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold all insurance policy, bank account, and routing numbers within the submitted information under section 552.136 of the Government Code.

We note some of the remaining information may be protected by copyright. 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.

In summary, to the extent it is not publicly available on Mindboard's company website, the county must withhold the client reference information we marked under section 552.110(c) of the Government Code. The county must withhold all insurance policy, bank account, and routing numbers within the submitted information under section 552.136 of the Government Code. The county must release the remaining information; however, any information subject to 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

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 837688

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)