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ATTORNEY GENERAL OF TEXAS

August 20, 2020

Ms. Jo Christy Brown
Counsel for the City of Lampasas
Law Offices of JC Brown, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2020-21021

Dear Ms. Brown:

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# 838710 (ORR# RW 5.20.2020).

The City of Lampasas (the "city"), which you represent, received a request for information pertaining to payments made under city insurance plans. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.117 of the Government Code. The city also states, and provides documentation showing, it notified Scott & White Health Plan ("SWHP") of the city's receipt of the request for information and of SWHP's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 correspondence from SWHP objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹ 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code § 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 the *Industrial Foundation* decision. *Id.* at 683. This office has found personal financial information not relating to the 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). Upon review, we find Exhibit C satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the city has established the release of Exhibit D would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the city has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Therefore, we conclude the city may withhold Exhibit D under section 552.104(a). However, we find the city has failed to demonstrate the applicability of section 552.104 to Exhibit B. Thus, we conclude the city may not withhold Exhibit B under section 552.104(a).

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 Gov’t Code § 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.

² As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

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

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). Upon review, we find SWHP has failed to provide specific factual evidence demonstrating any of the remaining information is a trade secret. Further, we find SWHP has failed to provide specific factual evidence demonstrating any of the remaining information constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of the remaining information under section 552.110 of the Government Code.

Section 552.1101(a) of the Government Code provides,

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.

Id. § 552.1101(a). Upon review, we find SWHP has failed to provide specific factual evidence demonstrating any of the remaining information is subject to section 552.1101(a). Therefore, the city may not withhold any of the remaining information under section 552.1101(a) of the Government Code.

In summary, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold Exhibit D under section 552.104(a) of the Government Code. The city 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 838710

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)