



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2020

Ms. Rebecca R. Cavazos  
Director of Purchasing  
South Texas College  
P.O. Box 9701  
McAllen, Texas 78502

OR2020-21833

Dear Ms. Cavazos:

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# 842165.

The South Texas College (the "college") received a request for information pertaining to request for proposals number 19-20-1001. You state the college will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.137 of the Government Code.<sup>1</sup> You also state release of the submitted information may implicate the proprietary interests of Barnes & Noble College Bookseller, LLC ("Barnes & Noble") and Texas Book Company ("Texas Book"). Accordingly, you state, and provide documentation showing, you 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 received

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<sup>1</sup> We note, and the college acknowledges, it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). However, because section 552.137 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the applicability of these arguments. *See id.* §§ 552.007, .302, .352.

comments from Texas Book. We have reviewed the submitted arguments and 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 Barnes & Noble explaining why the submitted information should not be released. Therefore, we have no basis to conclude Barnes & Noble 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 college may not withhold the submitted information on the basis of any proprietary interest Barnes & Noble may have in the information.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). However, we note the e-mail addresses at issue are contained in a response to a request for proposals and are therefore excluded by subsection (c)(3). *See id.* § 552.137(c)(3). Accordingly, the college may not withhold the e-mail addresses at issue under section 552.137 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). Texas Book argues its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Texas Book has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the college must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent Texas Book's customer information is publicly available on its company's website, we find the college may not withhold this information under section 552.110(c) of the

Government Code.<sup>2</sup> 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 Texas Book 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 college may not withhold any of the remaining information at issue 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). Texas Book argues the remaining information consists of trade secrets subject to section 552.110(b). However, as noted above, 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 Texas Book 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 college may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

In summary, the college must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent Texas Book’s customer information is publicly available on its company’s website, we find the college may not withhold this information under section 552.110(c) of the Government Code. The college must release the remaining information.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/jxd

Ref: ID# 842165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)