



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 18, 2020

Ms. Lisa K. Hargrove  
General Counsel  
Houston First Corporation  
701 Avenida de las Americas  
Houston, Texas 77010

OR2020-23630

Dear Ms. Hargrove:

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# 844196 (84419620).

The Houston First Corporation (the “corporation”) received a request for e-mails between two named individuals. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code.<sup>1</sup> Additionally, the corporation states release of the submitted information may implicate the proprietary interests of a third party. Accordingly, the corporation states, and provides documentation showing, it notified the interested third party of the request for information and of its right to submit arguments to this office. *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 Bayou Limited Partnership and the Cordish Companies (collectively, “Bayou”). We have considered the submitted arguments and reviewed the submitted information.

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.” Gov’t Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

---

<sup>1</sup> We note the corporation 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). Nonetheless, because section 552.131 and the interests of third parties can provide a compelling reasons to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

(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). Bayou argues the information it indicated consists of trade secrets subject to section 552.110(b). However, upon review, we find Bayou has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, the corporation may not withhold any of the information at issue under section 552.110(b) of the Government Code.

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). Bayou argues the information it indicated consists of commercial or financial information subject to section 552.110(c). However, upon review, we find Bayou has failed to provide specific factual evidence demonstrating the information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the corporation may not withhold any of the information at issue under section 552.110(c) of the Government Code.

The corporation and Bayou raise section 552.131 of the Government Code for some of the submitted information. Section 552.131 relates to economic development information and provides, in part, the following:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

*Id.* § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “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.* § 552.131(a). Section 552.131(a) protects the proprietary interest of third parties that have provided information to governmental bodies, not the interests of the government bodies themselves. Thus, we do not address the corporation’s arguments under section 552.131(a) for the information at issue. Further, because Bayou has not demonstrated the information at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the submitted information may be withheld pursuant to section 552.131(a).

Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* § 552.131(b). Section 552.131(b) protects the interests of governmental bodies, not third parties. The corporation asserts the submitted information relates to confidential economic development negotiations that have not resulted in final agreements with the business prospects. Upon review, we find the corporation has not demonstrated any of the submitted information reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the corporation may not withhold any of the submitted information under section 552.131(b) of the Government Code. The corporation 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

Ref: ID# 844196

c: Requestor

1 Third Party