



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2020

Ms. Kristyn Sorensen  
Assistant General Counsel  
Texas Tech University System  
P.O. Box 45031  
Lubbock, Texas 79409-5031

OR2020-23904

Dear Ms. Sorensen:

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# 844981.

The Texas Tech University Health Sciences Center (the "university") received a request for information related to a specified request for proposals. You state the university has released some information to the requestor. You also state the university does not maintain some of the requested information.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Professional Service Bureau, Inc. ("PSB"). Accordingly, you state, and provide documentation showing, the university notified PSB of the request for information and of the 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 PSB. We have reviewed the submitted arguments and the submitted information.

PSB raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a

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<sup>1</sup> The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. See *Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code 552.104(a). Therefore, we do not address PSB’s arguments under section 552.104.

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.

*Id.* § 552.110(a). PSB argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find PSB has demonstrated portions of its information at issue constitute trade secrets. Accordingly, to the extent PSB’s customer information is not publicly available on its website, the university must withhold PSB’s customer information under section 552.110(b) of the Government Code.<sup>2</sup> However, we find PSB has failed to provide specific factual evidence demonstrating any portion of its remaining information at issue is a trade secret. Therefore, the university may not withhold any of the remaining 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). PSB argues some of its remaining information consists of commercial or financial information subject to section 552.110(c). However, we find PSB has failed to provide specific factual evidence demonstrating its remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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<sup>2</sup> In this instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.136 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 governmental body is confidential.”<sup>3</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, to the extent PSB’s customer information is not publicly available on its website, the university must withhold PSB’s customer information under section 552.110(b) of the Government Code. The university must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The university 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/rm

Ref: ID# 844981

Enc. Submitted documents

c: Requestor

Third Party

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<sup>3</sup> 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).