



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2020

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2020-24266

Dear Ms. Tynan:

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# 845774 (OGC# 197945).

The University of Texas at El Paso (the "university") received a request for three specified contracts and any amendments pertaining to COVID-19. You state the university will release some of the requested information. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of SPS Air, LLC ("SPS") and Van Wagner Sports & Entertainment, LLC ("Van Wagner"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request and their 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 SPS and Van Wagner. We have reviewed the submitted arguments and reviewed the submitted information.

You state the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-09991 (2020). In that ruling, we determined the university must release the submitted information. We note Van Wagner now seeks to withhold some of its information under section 552.110 of the Government Code and SPS seeks to withhold some of its information under sections 552.110 and 552.1101 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is

confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the university may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Because sections 552.110 and 552.1101 make information confidential by law, we will address SPS's and Van Wagner's arguments under sections 552.110 and 552.1101 for the information that was previously ordered released.

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.

Id. § 552.110(a). 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].

Gov't Code § 552.110(c). As discussed above, SPS and Van Wagner seek to withhold information that was ordered released in Open Records Letter No. 2020-09991. Since the issuance of the previous ruling, neither SPS nor Van Wagner has disputed this office's conclusion regarding the release of the information at issue. Accordingly, we find SPS and Van Wagner have not taken any measures to protect their information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause the companies substantial harm. *See id.* § 552.110. Therefore, the university may not withhold any of SPS's or Van Wagner's information under section 552.110 of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure "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[.]*" *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find SPS has failed to demonstrate the applicability of section 552.1101(a)

to its information. Accordingly, the university may not withhold any of the information at issue under section 552.1101(a). Therefore, the university 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 845774

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)