KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2020

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-24488

Dear Mr. Miles:

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# 846540 (HHSC ORR No. 23102).

The Texas Health and Human Services Commission (the "commission") received a request for certain information pertaining to a specified request for offers. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Interactive Voice Applications, Inc. ("IVA"). Accordingly, you state, and provide documentation showing, the commission notified IVA 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 IVA. We have considered the submitted arguments and reviewed the submitted information.

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]."

Gov't Code § 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). IVA argues some of the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find IVA has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent IVA's client information is publicly available on the company's website, it may not be withheld under section 552.110(c).[1] However, 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(c). Additionally, we find IVA has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the commission may not withhold any of the remaining information 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 know 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). Additionally, as noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). IVA argues some of its remaining information consists of trade secrets subject to section 552.110(b). However, 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 IVA has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the commission may not withhold any of the remaining information under section 552.110(b) of the Government Code.

In summary, the commission must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent IVA's client information is publicly available on the company's website, it may not be withheld under section 552.110(c) of the Government Code. The commission must release the remaining information.

---

[1] As our ruling is dispositive, we need not address the 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/gw

Ref: ID# 846540

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)