



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2020

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2020-24621

Dear Mr. Gomez:

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# 846730.

Lamar University (the "university") received a request for specified information from request for proposals 734-07232019-SE. You state you have released some 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 Hobsons, Inc. ("Hobsons"). Accordingly, you state, and provide documentation showing, you notified Hobsons of the request and 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 Hobsons. We have considered the submitted arguments and reviewed the submitted information.

As you acknowledge, some of the requested information was the subject of a previous request for ruling, as a result of which this office issued Open Records Letter No. 2020-19577 (2020). We understand the law, facts, or circumstances on which Open Records Letter Nos. 2020-19577 was based have not changed. Thus, the university must continue to rely on Open Records Letter No. 2020-19577 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that

information is or is not excepted from disclosure). However, we will consider the submitted arguments against disclosure of the information not subject to the previous ruling.

Next, we note Hobsons argues against the release of information that was not submitted by the university. This ruling does not address information that was not submitted by the university and is limited to the information the university has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Hobsons raises section 552.104 of the Government Code for a portion of the submitted 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 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.” *Id.* § 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 Hobsons' argument under section 552.104.

Hobsons raises section 552.110 of the Government Code for portions of the submitted information. Section 552.110(b) 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.” *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). 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). Additionally, we note section 552.0222(b) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Hobsons argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Hobson has demonstrated its customer information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold Hobsons' customer information under

section 552.110(c) to the extent it is not publicly available on the company website.¹ Nevertheless, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). Additionally, we find Hobsons has failed to provide specific factual evidence demonstrating any portion of the rest of the information at issue constitutes a trade secret or 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 under section 552.110 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the university must continue to rely on Open Records Letter No. 2020-19577 as a previous determination and withhold or release the information at issue in accordance with that ruling. The university must withhold Hobsons' customer information under section 552.110(c) of the Government Code to the extent it is not publicly available on the company website. The university must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/rm

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 846730

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)