



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2020

Ms. Jacqueline Hojem  
Public Information Coordinator  
Metro Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2020-25195

Dear Ms. Hojem:

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# 848301 (MPA TPIA No. 2020-0618).

The Metropolitan Transit Authority of Harris County ("Metro") received a request for proposals solicited in response to a specified solicitation. 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 IKnow, LLC; McConnell & Jones, LLP; Proudfoot a/k/a Alexander Proudfoot Company; TNR Accounting & Management Consulting, LLC; and Weaver & Tidwell, LLP ("Weaver"). Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their 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 Weaver. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the

applicability of the exception). Accordingly, Metro may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the 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.” *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). Weaver argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Weaver has demonstrated portions of the information at issue, including its client reference information, constitute trade secrets. Accordingly, Metro must withhold the information we marked, and, to the extent it is not publicly available on Weaver’s company website, Weaver’s client information we marked under section 552.110(b) of the Government Code.<sup>1</sup> However, we find Weaver has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, Metro may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

- (a) Except as provided by Section 552.0222, 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 is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

- (1) reveal an individual approach to:
  - (A) work;
  - (B) organizational structure;
  - (C) staffing;
  - (D) internal operations;

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

*Id.* § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Weaver asserts disclosure of some of its information would reveal an individual approach to organizational structure, staffing, and pricing methodology and give advantage to a competitor. Upon review, we find Weaver has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, Metro must withhold the information we marked under section 552.1101(a). 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 552.1101(a). *See id.* §§ 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Weaver has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, Metro may not withhold any of the remaining information at issue under section 552.1101(a).

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>2</sup> Gov’t Code § 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. Accordingly, METRO must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Weaver notes, and we agree, some of the materials at issue 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).

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<sup>2</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).

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, Metro must withhold the information we marked, and, to the extent it is not publicly available on Weaver's company website, Weaver's client information we marked under section 552.110(b) of the Government Code. Metro must withhold the information we marked under section 552.1101(a) of the Government Code. Metro must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. Metro must release the remaining information; however, any information that is subject to copyright may be released only 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,

Sean McCormick  
Assistant Attorney General  
Open Records Division

SMC/jxd

Ref: ID# 848301

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)