



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Ms. Maya Godbold
Manager, Records and Analytics
Lone Star College
5000 Research College Drive
The Woodlands, Texas 77381-4356

OR2020-27618

Dear Ms. Godbold:

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# 851296 (PIR Nos. 20-193, 20-232, 20-235).

Lone Star College (the "college") received multiple requests for information pertaining to a specified request for proposals.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Kualu. Accordingly, you state, and provide documentation showing, you notified Kualu of the request for information and of its 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 Kualu. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Kualu makes arguments against disclosure of information the college has not submitted to this office for review. This ruling does not address information that was not submitted by the college and is limited to the information the college 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).

Next, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public

¹ As you have not submitted a copy of the requests for information for our review, we take our description from your brief to our office.

disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us the college received multiple requests for information. However, as of the date of this letter, you have not submitted to this office copies of the written requests for information. Accordingly, we conclude the college failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The college claims section 552.104 of the Government Code for the submitted information. Because third party interests provide a compelling reason to overcome the presumption of openness, we will address Kualii's arguments for the submitted information. However, we find you have failed to establish a compelling reason to address your exception.

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 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). Kualii argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Kualii has demonstrated portions of the information at issue constitute trade secrets. Accordingly, to the extent the information at issue is not published Kualii's website, the college must withhold the information we have marked under section 552.110(b) of the Government Code.² However, we find Kualii has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the college may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

² In this instance, as our ruling is dispositive, we need not address Kualii's remaining argument against disclosure of this information.

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;

(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). Quali asserts disclosure of some of its information would reveal an individual approach to its staffing, processes, and pricing and give advantage to a competitor. Upon review, 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 Quali has failed to provide specific factual evidence demonstrating any portion of the remaining

information at issue is subject to section 552.1101(a). Therefore, the college may not withhold any of the remaining information at issue under section 552.1101(a).

We note some of the remaining information appears to 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, to the extent the information at issue is not published on the college's website, the college must withhold the information we have marked under section 552.110(b) of the Government Code. The college must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

Finally, the college asks this office to issue a previous determination that would permit it to withhold information under section 552.104 of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/rm

Ref: ID# 851296

Enc. Submitted documents

c: Requestor

Third Party