



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 4, 2020

Mr. James E. Byrom  
Counsel for San Jacinto College  
Thompson & Horton, L.L.P.  
3200 Southwest Freeway  
Houston, Texas 77027-7554

OR2020-27691

Dear Mr. Byrom:

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# 851525 (Ref. No. 66105914).

San Jacinto College (the "college"), which you represent, received a request for the bid tabulation and proposals pertaining to a specified bid. The college claims some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.<sup>1</sup> Additionally, the college states release of the submitted information may implicate the proprietary interests of Anslow Bryant Construction Ltd.; Bartlett Cocke General Contractors, LLC; Brookstone, LP; DPR Construction; E.E. Reed Construction, L.P.; Flintco, LLC ("Flintco"); Hoar Construction; JE Dunn Construction; Morganti Texas, Inc.; O'Donnell/Snider Construction; Structure Tone Southwest ("Structure"); Tellepsen Builders, LP ("Tellepsen"); The Whiting-Turner Contracting Company; Westfall Constructors, Ltd. ("Westfall"); and White Construction Company. Accordingly, the college states, and provides documentation showing, it notified these 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 received comments from Flintco,

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<sup>1</sup> The college acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.136 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

Structure, Tellepsen, and Westfall. We have reviewed the submitted arguments and the submitted information.<sup>2</sup>

Initially, we note the college has not submitted the requested bid tabulation. To the extent any information responsive to this portion of the request existed on the date the college received the request, we assume the college has released it. If the college has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note Tellepsen argues against the release of information that was not submitted by the college. 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 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 id.* § 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, the college may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Structure and Westfall raise section 552.104 of the Government Code for a portion of their 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 Structure's and Westfall's arguments under section 552.104 of the Government Code.

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<sup>2</sup> We note the submitted information includes information pertaining to the requestor's company. As we assume the requestor does not seek access to the requestor's own information, we do not address the public availability of that information.

Flintco, Structure, Tellepsen, and Westfall raise section 552.110 of the Government Code for some of its information at issue.<sup>3</sup> 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 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:

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].

*Id.* § 552.110(c). Upon review, we find Flintco, Tellepsen, and Westfall demonstrated portions of the information at issue, including its customer information, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the college must withhold the information we marked and, to the extent it is not publicly available on Flintco’s, Tellepsen’s, and Westfall’s websites, the customer information we marked under section 552.110(c) of the Government Code.<sup>4</sup> However, we find Flintco, Tellepsen, and Westfall failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Further, we find Structure, Tellepsen, and Westfall 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 of the Government Code.

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

- (a) . . . [I]nformation 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

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<sup>3</sup> Although Westfall raises former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand Westfall to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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.

*Id.* § 552.1101(a). Upon review, we find Flintco, Tellepsen, and Westfall failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the college may not withhold it on that basis.

Section 552.136 of the Government Code provides, “Notwithstanding 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.” *Id.* § 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, the college must withhold all insurance policy numbers within the submitted information under section 552.136 of the Government Code.

In summary, the college must withhold the information we marked and, to the extent it is not publicly available on Flintco’s, Tellepsen’s, and Westfall’s websites, the customer information we marked under section 552.110(c) of the Government Code. The college must withhold all insurance policy numbers within the submitted information under section 552.136 of the Government Code. The college must release the remaining 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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/jxd

Ref: ID# 851525

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

15 Third Parties  
(w/o enclosures)