



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2020

Mr. Tyrone Lin
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2020-28886

Dear Mr. Lin:

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# 854502 (GC No. 26927).

The City of Houston (the "city") received a request for information related to a specified request for proposals. You state the city will release some of the requested information. Although you claim no exceptions to disclosure, you state release of the submitted information may implicate the proprietary interests of A.C.T. Brand Services; Big Oak Tree Media; BQR Advertising and Public Relations; Danta Group LLC; Extend Your Reach; High Five Marketing Partners; MPACT Strategic Consulting, LLC; Outreach Strategists, LLC ("Outreach"); S. Groner Associates; SAGE Strategic Marketing; Tell Your Tale Marketing & Design; The Voice Society LLC ("The Voice Society"); TLC Adcentives, LLC; and Versa Creative Group, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties 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 Outreach and The Voice Society. We have reviewed the submitted arguments and the submitted information.

Initially, we note some of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2020-20799 (2020). In Open Records Letter No. 2020-20799, we determined the city

must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; must withhold the bank account, routing, and insurance policy numbers under section 552.136 of the Government Code; and must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law. We understand the city did so. Although the city notified Outreach and The Voice Society pursuant to section 552.305 of the Government Code when the city received the previous requests for information, Outreach and The Voice Society did not submit comments objecting to the release of their respective information in the previous ruling. As a result, we concluded the city must release some of the information pertaining to Outreach and The Voice Society. Outreach and The Voice Society now argue some of this released information is excepted from disclosure under sections 552.101, 552.110, and 552.1101 of the Government Code.

Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. Because information subject to sections 552.101, 552.110, and 552.1101 is deemed confidential by law, we will consider the arguments of Outreach and The Voice Society under these exceptions for their previously released information. Nevertheless, with regard to the remaining information, there is no indication the law, facts, and circumstances on which the previous ruling was based have changed. Accordingly, with regard to the remaining information that was at issue in the previous ruling, we conclude the city must continue to rely on Open Records Letter No. 2020-20799 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty,

¹ As we are able to make this determination, we need not consider the argument against disclosure of this information.

interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the city must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. However, we find Outreach has failed to demonstrate the applicability of section 6103(a) of title 26 of the United States Code to the remaining information at issue. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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[.]” Gov’t Code § 552.110(c). The Voice Society claims some of the information at issue consists of commercial or financial information subject to section 552.110(c). However, the information at issue was previously ordered released in Open Records Letter No. 2020-20799. We note The Voice Society has not disputed this office’s conclusion regarding the release of the information at issue since the issuance of the previous ruling. In this regard, we find The Voice Society has not provided any measures to protect its information in order for this office conclude the information now constitutes commercial or financial information, the release of which would cause the company substantial harm. *See id.* § 552.110. Therefore, the city may not withhold the information at issue under section 552.110(c) 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 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). The Voice Society asserts disclosure of some of its information would reveal an individual approach to work, organization structure, staffing, internal operations, and processes and give advantage to a competitor. As noted above, the information pertaining to The Voice Society was the subject of Open Records Letter No. 2020-20799 and The Voice Society did not object to release of the information at issue at that time. Since the issuance of the previous ruling, The Voice Society has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find The Voice Society has not taken any measures to protect the information at issue in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. Therefore, the city may not withhold any of the information at issue under section 552.1101.

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) of the Government Code 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 ruling, we have not received comments from any remaining third parties explaining why the remaining information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold any of the remaining information at issue on the basis of any proprietary interest the remaining third parties may have in the information.

We note some of the remaining information may be subject to copyright law. 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 city must continue to rely on Open Records Letter No. 2020-20799 as a previous determination and withhold or release the identical information in the submitted information in accordance with that ruling. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jm

Ref: ID# 854502

Enc. Submitted documents

c: Requestor
(w/o enclosures)

14 Third Parties
(w/o enclosures)