



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2020

Mr. Kenneth Spears
Assistant Criminal District Attorney
Tarrant County Criminal District Attorney's Office
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2020-28950

Dear Mr. Spears:

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# 854160.

The Tarrant County Purchasing Department (the "department") received a request for information pertaining to a specified solicitation. The department informs us it has released some information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of Ad-A-Staff Inc. ("Ad-A-Staff"); Smith Temporaries, Inc. d/b/a/ CornerStone Staffing ("CornerStone"); and Diskriter, Inc. ("Diskriter"). Accordingly, the department states, and provides documentation showing, it notified each third party 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 Ad-A-Staff, CornerStone, and Diskriter. We have reviewed the submitted information and the submitted arguments.

Initially, we note Diskriter argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the department has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the department submitted as responsive to the request for information.

CornerStone and Diskriter raise section 552.104 of the Government Code for portions 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 CornerStone’s or Diskriter’s arguments under section 552.104 of the Government Code.

Ad-A-Staff, CornerStone, and Diskriter raise section 552.110 of the Government Code for portions of the submitted information.¹ 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). Ad-A-Staff, CornerStone, and Diskriter argue some of their information consists of trade secrets subject to section 552.110(b). Upon review, we find Ad-A-Staff, CornerStone, and Diskriter have demonstrated portions of the information at issue, including their customer information, constitute trade secrets. Accordingly, the department must withhold Ad-A-Staff’s, CornerStone’s, and Diskriter’s customer information under section 552.110(b) of the Government Code to the extent it is not publicly available on their company website.² Additionally, the department must withhold CornerStone’s information we marked under section 552.110(c) of the Government Code. However, we find Ad-A-Staff,

¹ Although Ad-A-Staff does not raise section 552.110 in its brief, we understand it to raise this exception based on the substance of its arguments.

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

CornerStone, and Diskriter have 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 department may not withhold any of the remaining information under section 552.110, and the department must release it.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 854160

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Party
(w/o enclosures)