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ATTORNEY GENERAL OF TEXAS

November 19, 2020

Mr. James E. Byrom
Counsel for San Jacinto College
Thompson & Horton LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027-7554

OR2020-29078

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# 851513.

San Jacinto College (the "college"), which you represent, received a request for four points of information pertaining to a specified request for proposals. The college claims the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.136 of the Government Code. Additionally, the college states release of the submitted information may implicate the proprietary interests of the following third parties: Communication Axxess Ability Group; Crabtree Interpreting Services; Deaf Services Unlimited; LanguageLine Solutions; MasterWord Services, Inc. ("MasterWord"); SAI Interpreting & Translation; Sign Language Accessible Interpreters LLC d/b/a Accessible Signs; and Universe Technical Translation. Accordingly, the college states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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 MasterWord. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note MasterWord seeks to withhold information the college did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the college.² 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, and the college acknowledges, the college did not comply with the time periods prescribed by section 552.301(e) of the Government Code in seeking an open records decision from this office. See *id.* § 552.301(e). 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The college claims sections 552.104, 552.110, and 552.136 of the Government Code for the submitted information. We find the college has failed to establish a compelling reason to address its claim under section 552.104. Further, because section 552.110 protects the interests of third parties that provide the information, not a governmental body's interest, we do not address the college's section 552.110 assertion. See Gov't Code § 552.110 (section excepts from disclosure trade secrets and commercial or financial information obtained from person). However, because section 552.136 of the Government Code as well as third party interests can provide compelling reasons to overcome the presumption of openness against disclosure of the submitted information, we will consider this exception as well as whether the submitted information may be withheld on behalf of the third parties.

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) 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 letter, we have only received comments from MasterWord explaining why the 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 submitted information. See, e.g., *id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the college may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

MasterWord raises section 552.104 of the Government Code for its 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

² As we are able to make this determination, we need not address MasterWord's arguments against disclosure of this information.

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 MasterWord’s arguments under section 552.104.

MasterWord raises section 552.110 of the Government Code for its 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). 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). MasterWord argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find MasterWord has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the college must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent MasterWord’s customer information is publicly available on its website, it may not be withheld under section 552.110(c) of the Government Code.³ However, we find MasterWord has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the college may not withhold any portion of the remaining information at issue under section 552.110.

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

³ As our ruling is dispositive, we need not address MasterWord’s remaining arguments against disclosure of this information.

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), (b). MasterWord asserts disclosure of some of its remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing methodology or other pricing information that will be used in future solicitation or bid documents and give advantage to a competitor. Upon review, however, we find MasterWord 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, the college 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the college has not explained any of the remaining information consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find the college has failed to demonstrate the applicability of section 552.136 to any of the remaining information, and the college may not withhold it on this ground.

In summary, the college must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent MasterWord’s customer information is publicly available on its website, it may not be withheld under section 552.110(c) 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 851513

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)