



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2020

Ms. Leticia Brysch
City Clerk/PIO
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2020-29161

Dear Ms. Brysch:

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# 855257 (PIR #18,528).

The City of Baytown (the "city") received a request for a particular study, as well as the related bid proposal. We understand the city takes no position regarding whether the submitted information is excepted from disclosure.¹ However, you state its release may implicate the proprietary interests of Gallagher. Accordingly, the city states, and provides documentation showing, it notified Gallagher 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 Gallagher. We have considered the submitted arguments and reviewed the submitted information.

Gallagher raises section 552.110 of the Government Code for portions of the submitted 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* Gov't Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

¹ Although the city raises sections 552.110 and 418.182 of the Government Code, it makes no arguments in support of these exceptions. Therefore, we assume the city has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

- (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). Gallagher generally argues portions of its information are subject to section 552.110. Upon review, we find Gallagher has failed to provide specific factual evidence demonstrating any portion 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 city may not withhold any of the submitted information under section 552.110 of the Government Code.

We note some of the submitted 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. Therefore, the city must release the submitted information; however, any information protected by copyright may only be released 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)