



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2020

Ms. Valerie Griffin
Open Records Staff
Texas Health and Human Services Commission
Mail Code 1100
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-29721

Dear Ms. Griffin:

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# 855658 (Ref. No. 23767).

The Health and Human Services Commission (the "commission") received a request for information related to a specified solicitation. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing, you 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 have received comments from Alcohol Drug Abuse Council Deep East Texas ("ADACDET"), Aliviane Inc. ("Aliviane"), Behavioral Health ("Behavioral"), Life Steps ("Life"), Permian Basin Council on Alcohol and Drug Abuse ("PBRCADE"), San Antonio Council on Alcohol and Drug Awareness ("SACADA"), Serving Children and Adults in Need ("SCAN"), the Council on Alcohol and Drug Abuse - Coastal Bend ("CADA-CB"), and The Council on Recovery (the "Council"). We have reviewed the submitted information and considered the submitted arguments.

¹ The third parties are: Abilene Recovery Council; Alcohol Drug Abuse Council Deep East Texas; Aliviane Inc.; Behavioral Health; Life Steps; Longview Wellness; Lubbock Regional MHMR; Permian Basin Council on Alcohol and Drug Abuse; San Antonio Council on Alcohol and Drug Awareness; Santa Maria Hostel; Serving Children and Adults in Need; Tarrant County; The Council on Alcohol and Drug Abuse - Coastal Bend; The Council on Recovery; and UT Arlington.

Initially, 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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 commission may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Next, we note the commission has not submitted information responsive to the portion of the request seeking evaluation materials. To the extent any information responsive to this portion of the request existed on the date the commission received the request, we assume the commission has released it. If the commission 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).

Further, we note SCAN argues against the release of information that was not submitted by the commission. This ruling does not address information that was not submitted by the commission and is limited to the information the commission 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).

Aliviane, Council, and PBRCADEA raise section 552.104 of the Government Code for a portion of the information at issue. 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 Aliviane, Council, and PBRCADEA's arguments under section 552.104.

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

- (a) Except as provided by Section 552.0222, information 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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). ADACET, Behavioral, COADACB, Life, SACADA, and SCAN assert disclosure of some of their information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, and pricing methodology and give advantage to competitors. Upon review, we find ADACET, Behavioral, Life, SACADA, and SCAN have demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the commission must withhold the information we marked and indicated under section 552.1101(a). However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find ADACET, Behavioral, COADACB, Life, SACADA, and SCAN have 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 commission may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.110(c) of the Government Code states:

(c) 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Aliviane, ADACET, Behavioral, COADACB, Council, Life, and PBRCADE argue some of their information consists of commercial or financial information subject to section 552.110(c).² Upon review, we find Aliviane, Council, Life, and PBRCADE have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we marked under section 552.110(c) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find Aliviane, ADACET, Behavioral, COADACB, Council, Life, and PBRCADE have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the commission may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). ADACET, Behavioral, COADACB, and Life argue some of their information consists of trade secrets subject to section 552.110(b). Upon review, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section

² We note the Eighty-sixth Legislature amended section 552.110 effective January 1, 2020. *See Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 4.* Accordingly, we understand Aliviane, Council, and PBRCADE to raise subsection 552.110(c) for the information at issue.

552.110(b). Additionally, we find ADACET, Behavioral, COADACB, and Life have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the commission may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Behavioral, Life, and SACADA assert some of the remaining information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy). Further, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev’d* on other grounds, 796 S.W.2d 692 (Tex. 1990). Upon review, we conclude Behavioral, Life, and SACADA have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the commission may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note ADACET raises section 552.102(a) of the Government Code as an exception to disclosure of portions of its information. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102(a) protects information relating to public officials and employees. *See* Open Records Decision No. 345 (1982). In this instance, the information at issue is related to a private entity, ADACET. Therefore, the commission may not withhold any portion of ADACET’s information under section 552.102(a) of the Government Code.

Life asserts some of the remaining information is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a

governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the information at issue consists of e-mail addresses that are specifically excluded by section 552.137(c). *See id.* Thus, the commission may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

In summary, the commission must withhold the information we marked and indicated under section 552.1101(a) of the Government Code. The commission must withhold the information we marked under section 552.110(c) of the Government Code. The commission 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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/mo

Ref: ID# 855658

Enc. Submitted documents

c: Requestor
(w/o enclosures)

15 Third Parties
(w/o enclosures)