



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2020

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2020-30404

Dear Mr. Miles

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# 856802 (HHSC Reference ORR No. 23818).

The Texas Health and Human Services Commission (the "commission") received a request for the winning proposal for request for offers number HHS0007054 Texas Early Hearing Detection and Intervention. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Optimization Zorn d/b/a OZ Systems ("OZ") 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 OZ. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 understand OZ to assert some of its submitted information is subject to common-law privacy. Upon review, we find OZ has failed to demonstrate any of its information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the commission may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

OZ raises section 552.102(a) of the Government Code as an exception to disclosure of a portion of its proposal. 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, OZ. Therefore, the commission may not withhold any portion of OZ’s proposal under section 552.102(a) 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.

(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.

Gov't Code § 552.1101(a), (b). OZ asserts disclosure of some of its information would reveal an individual approach work and give advantage to a competitor. However, we find the information at issue is subject to section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.1101(b) (listing certain types of information not excepted under section 552.1101). Therefore, the commission may not withhold any of the information at issue under section 552.1101(a).

We note some of the materials at issue may be protected by copyright. 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. The commission must release the submitted information; however, any information subject to 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third party  
(w/o enclosures)