



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 9, 2020

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2020-30765

Dear Mr. Entsminger:

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# 85682].

The Travis County Healthcare District d/b/a Central Health the district (the "district") received a request for proposals submitted in response to request for proposals 2012-0012 Contract Management. 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 third parties. Accordingly, you state, and provide documentation showing, you notified All About IT, Inc; Canon Solutions America, Inc.; Cobblestone Software ("Cobblestone"); Geospatial Analytics, Inc.; Ivalua, Inc. ("Ivalua"); LSI Consulting ("LSI"); Margasoft Corporation; Negometrix USA, Inc.; Periscope Holdings; RuleTek; Smart Software Solutions, Inc.; and Sonata Labs, LLC 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 Cobblestone, Ivalua, and LSI. We have considered the submitted arguments and reviewed the submitted information.

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 any of the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of 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). Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest any of the remaining third parties may have in it.

Cobblestone asserts that some of its information is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). However, Cobblestone has not directed our attention to any law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, we conclude the district may not withhold the submitted information under that section.

Cobblestone raises section 552.104 of the Government Code for portions of 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 situation again in the future.” Gov’t Code § 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 Cobblestone’s arguments under section 552.104.

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.

*Id.* § 552.1101(a). LSI asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, internal operations, and processes and give advantage to a competitor. Upon review, we find LSI has demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the district must withhold the information we indicated under section 552.1101 of the Government Code.<sup>1</sup>

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). Cobblestone and Ivalua argue some of their information consists of trade secrets subject to section 552.110(b). Upon review, we find Cobblestone and Ivalua have demonstrated their customer information constitute trade secrets. Accordingly, the district must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information we have marked is publicly available on Cobblestone’s or

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<sup>1</sup> As our ruling on this information is dispositive, we need not address LSI’s remaining arguments against disclosure.

Ivalua's website, it may not be withheld under section 552.110(b).<sup>2</sup> 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(b). Additionally, we find Cobblestone and Ivalua 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 district may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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). Cobblestone and Ivalua argue some of their remaining information consists of commercial or financial information subject to section 552.110(c). 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 552.110(c). Additionally, we find Cobblestone and Ivalua 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 district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, 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.” Gov’t Code § 552.136; *see also id.* § 552.136(a) (defining “access device”). Accordingly, we find the district must withhold the submitted insurance policy numbers under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). Cobblestone asserts the e-mail addresses within its proposal are excepted from disclosure under section 552.137. However, we note the e-mail addresses in the remaining information are excluded by subsection 552.137(c). *See id.* § 552.137(c) (Subsection (a) does not apply to an e-mail address contained in a response to a request for bids or proposals or contained in a response to similar invitations soliciting offers). Accordingly, the district may not withhold any of the remaining information under section 552.137 of the Government Code.

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<sup>2</sup> As our ruling on this information is dispositive, we need not address the remaining arguments against disclosure of this information.

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.

In summary, the district must withhold the information we indicated under section 552.1101 of the Government Code. The district must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information we have marked is publicly available on Cobblestone's or Ivalua's website, it may not be withheld. The district must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. The district must release the remaining 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

Ref: ID# 856821

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

13 Third Parties  
(w/o enclosures)