



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2020

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3680

OR2020-31097

Dear Ms. Jimenez:

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# 857788 (Ref. No. 20-OR-107).

The Nueces County Purchasing Department (the "county") received a request for the scoring sheet and winning proposal pertaining to a specified request for qualifications. You state the county has released some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Lockwood, Andrews & Newnam, Inc. ("LAN").¹ Accordingly, you state, and provide documentation demonstrating, the county notified LAN 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 LAN. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note LAN argues against the release of information the county has not submitted to this office for our review. This ruling does not address information that was

¹ We note the county did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Thus, we will consider whether the information at issue is excepted from disclosure under the Act.

not submitted by the county. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Thus, this ruling is limited to the information the county has submitted for our review.² *See id.*

LAN raises section 552.104 of the Government Code for its 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 LAN's arguments under section 552.104 of the Government Code.

LAN raises section 552.110 of the Government Code for its information at issue.³ Section 552.110(b) states, in relevant part, “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). Upon review, we find LAN has failed to provide specific factual evidence demonstrating any portion of its information at issue is a trade secret. Further, we find LAN has failed to provide specific factual evidence demonstrating any portion of its information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore,

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

³ Although LAN cites to former subsections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current subsections 552.110(b) and 552.110(c) based on the substance of its arguments.

the county may not withhold any of the submitted information under section 552.110 of the Government Code. The county must release the submitted 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 857788

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)