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ATTORNEY GENERAL OF TEXAS

December 17, 2020

Ms. Ashley L. White  
Counsel for Brazosport College  
Thompson & Horton, L.L.P.  
500 North Akard Street, Suite 3150  
Dallas, Texas 75201

OR2020-31635

Dear Ms. White:

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# 858534.

Brazosport College (the "college"), which you represent, received a request for award information pertaining to two specified requests for proposals. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Anthology, Inc. ("Anthology"); Ellucian; Jenzabar, Inc.; and Unit 4 Business Software, Inc. Accordingly, you state, and provide documentation demonstrating, you notified these third parties of the request for information and of the 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 Anthology. 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) of the Government Code 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 the submitted information should not be released. Thus, 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). Therefore, the college may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Next, we note you raise section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although you assert portions of the submitted information are excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your arguments under section 552.110 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.” *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 states:

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). Anthology raises section 552.110 of the Government Code for some of its information at issue. Upon review, we find the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Therefore, the college may not withhold any portion of the information at issue under section 552.110 of the Government Code. As no further exceptions to disclosure have been raised, the college 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jm

Ref: ID# 858534

c: Requestor

4 Third Parties