



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 18, 2020

Mr. Keith Martin  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2020-31913

Dear Mr. Martin:

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# 858022 (SAWS ORR No. R001246-100120).

The San Antonio Water System (the "system") received a request for information pertaining to a specified request for proposals. We understand the system will redact insurance policy numbers pursuant to section 552.136(c) of the Government Code.<sup>1</sup> You state the system will release some of the requested information. Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of 22nd Century Technologies, Inc.; Abacus Technical Services, L.L.C.; Apex Systems, L.L.C.; Beacon Systems, Inc.; Bridgewater Consulting Group, Inc.; COGENT Infotech Corp.; Judge Technical Services, Inc.; Midtown Personnel, Inc. ("Midtown"); National Human Resource Group, Inc.; Omega Solutions, Inc.; Sistema Technologies, Inc.; and VIP Staffing and VIP Technology Consultants. Accordingly, the system states, and provides documentation showing, it notified the 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

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<sup>1</sup> Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Midtown. We have reviewed the submitted information and considered the submitted arguments.

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 the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests 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 system may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

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). Midtown asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, and pricing information and give advantage to a competitor. Upon review, we find Midtown has demonstrated the applicability of section 552.1101(a) to some of the information at

issue. Accordingly, to the extent Midtown's customer information is not publicly available on its company's website, the system must withhold Midtown's customer information under section 552.1101 of the Government Code. However, to the extent it is publicly available on its company's website, we find the system may not withhold Midtown's customer information under section 552.1101 of the Government Code. Further, we find Midtown has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a) of the Government Code, and the system may not withhold it on that basis.

We understand the system will redact certain e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> 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). *See id.* § 552.137(a)-(c). However, section 552.137 is not applicable to an e-mail address "contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]" *See id.* § 552.137(c)(3). The e-mail addresses at issue are subject to section 552.137(c)(3). Therefore, the system may not withhold the e-mail addresses at issue under section 552.137 of the Government Code. *See id.* § 552.137(a).

We note some of the remaining information 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, to the extent Midtown's customer information is not publicly available on its company's website, the system must withhold Midtown's customer information under section 552.1101 of the Government Code. The system must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.<sup>3</sup>

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<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup> We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/gw

Ref: ID# 858022

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

13 Third Parties  
(w/o enclosures)