



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2022

Ms. Countess Dudley
Office of the General Counsel
Texas Southern University
3100 Cleburne Street
Houston, Texas 77004

OR2022-00084

Dear Ms. Dudley:

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# 923063.

Texas Southern University (the "university") received a request for the university's food services contract with Sodexo Services of Texas, L.P. ("Sodexo"), including all memorandums of understanding, amendments, and all changes documented in writing to the contract during a stated time period. The university claims the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code.¹ Additionally, the university states release of the submitted information may implicate the proprietary interests of Sodexo. Accordingly, the university states, and provides documentation showing, it notified Sodexo of the request for information and of its right to submit arguments to this office. *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 Sodexo. We have considered the submitted arguments and reviewed the submitted information.

¹ Although the university also raises sections 552.102 through 552.103 and 552.105 through 552.153 of the Government Code, the university provides no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume the university no longer asserts these exceptions. *See* Gov't Code §§ 552.301, .302.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the university has failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the university may not withhold the information at issue under section 552.104(a) 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.” *See* Gov’t Code § 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). Sodexo argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Sodexo has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code.² However, we find the remaining information at issue

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). Therefore, the university may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code. The university must release the remaining 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 923063

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)