



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Ms. Maria Miller  
Public Information Officer  
Ms. Torsha McCarty  
Legal Assistant  
Dallas College  
1601 South Botham Jean Boulevard  
Dallas, Texas 75215

OR2022-01569

Dear Ms. Miller and Ms. McCarty:

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# 925796.

Dallas College (the "college") received a request for three categories of information pertaining to a specified request for proposals.<sup>1</sup> You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of ABM Texas General Services, Inc.; AHI Facility Services, Inc.; All Janitorial Professional Services, Inc.; Ambassador Services, L.L.C.; APPRO, Inc.; Atalian US Midwest, L.L.C.; Covington's Consulting & Services, L.L.C. d/b/a No Ordinary Kleaning; EcoBrite Services, L.L.C.; EJSCS, Inc. d/b/a EJs Cleaning Services; LGC Global Energy FM, L.L.C.; Marcis & Associates, Inc.; Member's Building Maintenance, L.L.C.; RNA Facilities Management; Soji Services, Inc. d/b/a Metroclean Commercial Building Services ("Metroclean"); UBM Enterprise, Inc.; Unicare Building Maintenance, Inc.; and WFF Facility Services, L.L.C. Accordingly, you state, and provide documentation showing, 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

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<sup>1</sup> We understand the college sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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 Metroclean. 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 remaining interested third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining interested third party 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). Accordingly, the college may not withhold the submitted information on the basis of any proprietary interest any remaining interested third party may have in the information.

Metroclean raises section 552.104 of the Government Code for some 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." *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 841. 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 Metroclean's arguments under section 552.104.

Section 552.110(b) of the Government Code states, "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). Metroclean also argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Metroclean has demonstrated the information at issue constitutes trade secrets. Therefore, the college must withhold the information we marked, including Metroclean’s customer information, under section 552.110(b) of the Government Code; however, to the extent Metroclean’s customer information is made available to the public by Metroclean, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(b).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the college must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the college must withhold all insurance policy, bank account, and credit card numbers, including any partial numbers, in the remaining information under section 552.136 of the Government Code.

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 copyright law and the risk of a copyright infringement suit.

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the college must withhold the information we marked, including Metroclean's customer information under section 552.110(b) of the Government Code; however, to the extent the customer information is made available to the public by Metroclean, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(b). The college must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The college must withhold all insurance policy, bank account, and credit card numbers, including any partial numbers, in the remaining information under section 552.136 of the Government Code. The college must release the remaining information; however, any information subject to copyright may be released only 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/mo

Ref: ID# 925796

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

17 Third Parties  
(w/o enclosures)