



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711-3247

OR2022-01677

Dear Mr. Miles:

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# 926536 (ORR# A10132021.0450019).

The Texas Health and Human Services Commission (the "commission") received a request for proposals and scoring sheets from specified requests for proposals.<sup>1</sup> You state the commission will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state release of the submitted information may implicate the proprietary interests of DK Partners, PC ("DK"); Eide Bailly, LLP; Myers and Stauffer; and Weaver and Tidwell, LLP ("Weaver"). 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 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 DK and Weaver. We have reviewed the submitted arguments and the submitted information.

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<sup>1</sup> You state the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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

Next, we note Weaver argues against the release of information that was not submitted by the commission. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review.<sup>2</sup> *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code exempts 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." *Id.* § 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 you have established the release of the information you indicated would harm the commission's interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the commission may withhold the information you indicated under section 552.104(a) of the Government Code.<sup>3</sup>

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." 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

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<sup>2</sup> As we are able to make this determination, we need not address Weaver's arguments against disclosure of its information at issue.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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).

Upon review, we find DK has demonstrated its information at issue constitutes trade secrets. Accordingly, the commission must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by DK, including but not limited to on its company website or social media accounts, it may not be withheld under section 552.110. In addition, we find DK has demonstrated some of its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we marked under section 552.110(c) of the Government Code. However, we find the remaining information at issue consists of information subject to section 552.0222(b), and may not be withheld on the basis of section 552.110. *See id.* Therefore, the commission may not withhold the remaining information at issue under section 552.110 of the Government Code.

In summary, the commission may withhold the information you indicated under section 552.104(a) of the Government Code. The commission must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by DK, including but not limited to on its company website or social media accounts, it may not be withheld under section 552.110 of the Government Code. The commission must withhold the information we marked under section 552.110(c) of the Government Code. The commission 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/ba

Ref: ID# 926536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 4 Third Parties  
(w/o enclosures)