



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2022

Mr. R. Brooks Moore
Deputy General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2022-01792

Dear Mr. Moore:

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# 926249 [PIR F002368-100721].

The Texas Division of Emergency Management (the "division") received a request for bids, awards, contracts, and purchase orders pertaining to certain services.¹ Although the division takes no position regarding whether the submitted information is excepted from disclosure under the Act, the division informs us its release may implicate the proprietary interests of Ash Britt Environmental; CDR Maguire; Gothams; and SLSCO Ltd. Accordingly, the division states, and provides documentation showing, it notified these third parties of the request for information and of their 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 Gothams. We have considered the submitted arguments and reviewed the submitted information.

¹ We note the division sought and received clarification of the requested information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). The division also states it sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The division informs us it received a narrowed request in response to the cost estimate.

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 only received arguments from Gothams explaining why its 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, and the division may not withhold any portion of it on that basis. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

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). Gothams 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).² Upon review, we find Gothams has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the division must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Gothams is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section

² Although Gothams cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

552.110(c).³ However, we find some the remaining information at issue 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 division may not withhold any portion of the remaining information at issue under section 552.110.

Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, information 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Gothams asserts disclosure of some of its remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or discounts, pricing methodology, cost data, or other pricing information that will be used in future solicitation or bid documents and give advantage to a competitor. Upon review, we find Gothams has demonstrated the applicability of section 552.1101(a) to some of its information at issue. Accordingly, the division must withhold the information we indicated under section 552.1101 of the Government Code. However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not

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

excepted under section 552.1101). Therefore, the division may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the division must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Gothams is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(c). The division must withhold the information we indicated under section 552.1101 of the Government Code. The remaining information must be released.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/ba

Ref: ID# 926249

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 4 Third Parties
(w/o enclosures)