



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2901

OR2022-02814

Dear Ms. Tynan:

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# 927154 (ORR# 203575).

The University of Texas at Austin (the "university") received a request for a specified contract. Although you take no position regarding whether the submitted information is excepted from disclosure under the Act, you inform us its release may implicate the proprietary interests of Flash Photography ("Flash"). Accordingly, you state, and provide documentation showing, the university notified Flash 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 Flash. We have considered the submitted arguments and reviewed the submitted information.

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 sections 552.110 and 552.1101 do not apply. *See id.* § 552.0222(b). Upon review, we find Flash 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.<sup>1</sup> 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 552.110(b) or section 552.110(c) of the Government Code.

Flash asserts the remaining information at issue is subject to section 552.1101(a) of the Government Code. Section 552.1101(a) excepts from disclosure “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[.]*” *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find the Flash has failed to demonstrate the applicability of section 552.1101(a) to the remaining information at issue. Accordingly, the university may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the university must withhold the information we marked under section 552.110(c) 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

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Gerald Arizmendez  
Assistant Attorney General  
Open Records Division

GA/mo

Ref: ID# 927154

Enc. Submitted documents

c: Requestor  
(w/o enclosures)