



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2022

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

OR2022-03238

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# 929648 (PIR No. F002601-110421).

Texas A&M University—Corpus Christi (the “university”) received a request for five categories of information pertaining to a specified request for proposals.¹ We understand you have released 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 Groome Transportation of Texas, L.L.C. (“Groome”); SP Plus Corporation; Star Shuttle, Inc.; and WeDriveU, Inc. (“WDU”). 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 Groome and WDU. We have considered the submitted arguments and reviewed the submitted information.

¹ You state the university 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).

Initially, we note some of the submitted information, which we indicated, is not responsive to the instant request for information because it does not pertain to the specified request for proposals. This ruling does not address the public availability of any information that is not responsive to the request and the university is not required to release such information in response to this request.

Next, 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 responsive information should not be released. Therefore, we have no basis to conclude any remaining interested third party has a protected proprietary interest in the responsive information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold the responsive information on the basis of any proprietary interest any remaining interested third party may have in the information.

WDU 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 WDU's arguments under section 552.104.

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." *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). 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). Section 552.1101 of the Government Code provides, in relevant part, as follows:

(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 contract 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) organization 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 does not apply. *See id.* § 552.0222(b). Groome and WDU argue some of the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Groome and WDU have 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 some of the remaining responsive information at

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

issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Additionally, we find Groome and WDU have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining responsive information at issue constitutes trade secrets or commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining responsive information at issue under section 552.110.

Groome asserts some of the remaining responsive information at issue is subject to section 552.1101(a) of the Government Code and would give advantage to a competitor. Upon review, we find some of the remaining responsive information at issue is subject to section 552.0222(b), and may not be withheld on the basis of section 552.1101(a). In addition, we find Groome has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining responsive information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining responsive information at issue under section 552.1101(a) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.³ *See id.* § 552.130. Accordingly, the university must withhold all visible license plates in the remaining responsive information under section 552.130 of the Government Code. However, we find WDU has failed to demonstrate any of the remaining responsive information at issue is subject to section 552.130. Thus, the university may not withhold any of the remaining responsive information at issue under section 552.130 of the Government Code.

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 university must withhold all insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code. However, we find WDU has failed to demonstrate any of the remaining responsive information at issue consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See Gov't Code* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find WDU has failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining responsive information at issue, and the university may not withhold it on this ground.

We note some of the remaining responsive information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to

³ 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).*

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.

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code. The university must withhold all visible license plates in the remaining responsive information under section 552.130 of the Government Code. The university must withhold all insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code. The university must release the remaining responsive 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/ba

Ref: ID# 929648

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)