



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2022

Mr. Andrew Devine
Senior Associate Attorney
Dallas County Hospital District d/b/a Parkland Health & Hospital System
5200 Harry Hines Boulevard
Dallas, Texas 75235

OR2022-03731

Dear Mr. Devine:

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# 929671 (DCHD# 21-68).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for vending and cafeteria contracts for the system.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Dr. Pepper Snapple Group, Inc.; Morris Management Specialists, Inc.; Parkland Health and Hospital Systems Auxiliary; and SPG Vending Solutions, LLC ("SPG"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 SPG. We have considered the submitted arguments and reviewed the submitted information.

¹ You state you 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).

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 these 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 system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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.”² *See 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:

- (c) 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). SPG argues some of their information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find SPG has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive

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

harm. Accordingly, the system must withhold the information we marked under section 552.110(c) of the Government Code.³ However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find SPG has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the system may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

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

- (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or
- (2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). 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). SPG asserts disclosure of some of its information would reveal an individual approach to organizational structure, staffing, internal operations, processes, or other pricing information and give advantage to a competitor. Upon review, we find some of the remaining information at issue is subject to section 552.0222(b) or section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* §§ 552.0222(b), .1101(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find SPG has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the system may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the system must withhold the information we marked under section 552.110(c) of the Government Code. The system 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 929671

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)