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ATTORNEY GENERAL OF TEXAS

February 11, 2022

Ms. Logan Leal
Counsel for the Harris County Sports and Convention Corporation
Husch Blackwell, LLP
600 Travis Street, Suite 2350
Houston, Texas 77002

OR2021-04300

Dear Ms. Leal:

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# 928126.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for certain information pertaining to private security officers hired for a specified event during a stated time period. The corporation claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.117 of the Government Code. Additionally, the corporation states release of the submitted information may implicate the proprietary interests of Contemporary Services Corporation ("CSC") and Scoremore Holdings, LLC ("Scoremore"). Accordingly, the corporation states, and provides documentation showing, it 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 received comments from CSC. We have reviewed the submitted arguments and the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-03743 (2022). In that ruling, we determined the corporation may withhold the responsive information under section 552.103 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the corporation may rely on Open Records Letter No. 2022-03743 as

a previous determination and withhold the information we have marked in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 Scoremore explaining why the remaining information should not be released. Therefore, we have no basis to conclude Scoremore has 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 corporation may not withhold the remaining information on the basis of any proprietary interest Scoremore may have in the information.

Next, we note the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(3). The remaining information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the corporation that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* The corporation seeks to withhold the remaining information subject to section 552.022(a)(3) under sections 552.101, 552.103, and 552.117 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the corporation may not withhold the remaining information subject to section 552.022 under section 552.103 of the Government Code. However, as sections 552.101, 552.110, and 552.117 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the remaining information subject to section 552.022.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by other statutes. The corporation raises section 552.101 in conjunction with sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

Id. § 418.176(a). Section 418.177 provides,

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996). As with any confidentiality provision, a governmental body asserting these sections must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The corporation argues release of the remaining information would reveal security vulnerability at NRG Park. Based upon this representation and our review, we find some of the information at issue relates to staffing requirements or a tactical plan of the corporation and is maintained by the corporation for the purpose of preventing, detecting,

responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the corporation must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹ However, we find the corporation has failed to demonstrate any of the remaining information relates to staffing requirements or a tactical plan of an emergency response provider or relates to an assessment by or for a governmental entity that was collected, assembled, or maintained by or for the corporation for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the corporation may not withhold the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176 or 418.177 of the Government Code.

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 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). 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). CSC argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find CSC has demonstrated portions of the information at issue constitute trade secrets. Accordingly, the corporation must withhold the information we have marked and indicated under section 552.110(b) of the Government Code.² 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(b). Additionally, we find CSC has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the corporation may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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

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

We understand CSC to raise section 552.101 of the Government Code in conjunction with section 482 of title 6 of the United States Code, which prescribes the procedures for the sharing of homeland security information between federal and state agencies. *See* 6 U.S.C. § 482. Section 482 provides, in relevant part:

(e) [I]nformation obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

6 U.S.C. § 482(e). By its own terms, section 482(e) applies only to information obtained from a federal agency. *See id.* The remaining information at issue here was created by CSC or the corporation, and we find CSC failed to establish any of the remaining information was obtained from a federal agency. Accordingly, we find the information at issue does not constitute homeland security information obtained from a federal agency for the purposes of section 482(e). Therefore, section 482 of title 6 of the United States Code is not applicable to the information at issue, and it may not be withheld under section 552.101 of the Government Code on that basis.

CSC also raises the federal Trade Secrets Act, section 1905 of title 18 of the United States Code, in conjunction with section 552.101 of the Government Code. The Trade Secrets Act provides, in pertinent part:

[w]hoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act [. . .], or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

18 U.S.C. § 1905. By its terms, this statute pertains only to employees and agents of the federal government. State employees who are assigned to federal government agencies in some circumstances may be deemed federal employees for certain purposes. 5 U.S.C. § 3374. However, in this case there is no indication of such an assignment pertinent to the submitted information. The federal courts have held that no basis exists to justify

transforming officers and employees of state agencies into federal officers and employees for purposes of the Trade Secrets Act. *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369 (9th Cir. 1981). We conclude that the Trade Secrets Act does not prohibit the corporation from disclosing the information at issue. Accordingly, the corporation may not withhold any portion of CSC's information under section 552.101 of the Government Code in conjunction with the Trade Secrets Act.

CSC also argues some of its information fits the definition of a trade secret found in section 134A.002(6) of the Civil Practice and Remedies Code of the Texas Uniform Trade Secrets Act (the "TUTSA"). Section 552.101 of the Government Code also encompasses information made confidential by the TUTSA. Section 134A.002(6) provides, in relevant part, the following:

(6) "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(B) 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.

Civ. Prac. & Rem. Code § 134A.002(6). We note the legislative history of the TUTSA indicates it was enacted to provide a framework for litigating trade secret issues and provide injunctive relief or damages in uniformity with other states. Senate Research Center, Bill Analysis, S.B. 953, 83rd Leg., R.S. (2013) (enrolled version). Section 134A.002(6)'s definition of trade secret expressly applies to chapter 134A only, not the Act, and does not expressly make any information confidential. *See* Civ. Prac. & Rem. Code § 134A.002(6); *see also id.* § 134A.007(d) (TUTSA does not affect disclosure of public information by governmental body under the Act). *See* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. Accordingly, the corporation may not withhold any of CSC's information under section 552.101 of the Government Code in conjunction with section 134A.002(6) of the Civil Practice and Remedies Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the

governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Upon review, we find none of the remaining information is confidential under section 552.117 of the Government Code. Accordingly, the corporation may not withhold any of the remaining information on this basis.

In summary, the corporation may rely on Open Records Letter No. 2022-03743 as a previous determination and withhold the information we have marked in accordance with that ruling. The corporation must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The corporation must withhold the information we have marked and indicated under section 552.110(b) of the Government Code. The corporation 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jm

Ref: ID# 928126

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)