



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 15, 2022

Mr. Ronny H. Wall  
Senior Associate General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2022-04517

Dear Mr. Wall:

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# 929389.

Texas Tech University (the "university") received a request for certain information pertaining to a specified request for proposals. You state you will release some information to the requestor. 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 AHI Enterprises, LLC; CC Creations, Ltd.; and Scarborough Specialties, Inc. ("Scarborough"). Accordingly, you state, and provide documentation showing, you notified these interested 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 Scarborough. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from Scarborough. Thus, we have no basis to conclude any of the remaining interested third parties 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

university may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

Scarborough raises section 552.104 of the Government Code for a portion of its information.<sup>1</sup> 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 842. 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 Scarborough’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.” *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). Scarborough 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). However, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Upon review, we find Scarborough has demonstrated remaining

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<sup>1</sup> Although Scarborough also raises sections 552.101 and 552.102 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume Scarborough has withdrawn its claim that these sections apply to the submitted information. *See Gov’t Code §§ 552.301, .302.*

information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must generally withhold the information we have marked under section 552.110(c) of the Government Code.<sup>2</sup> However, to the extent any of the customer information Scarborough seeks to withhold has been made available to the public by Scarborough, including but not limited to on its website or social media accounts, such information is not confidential 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). Scarborough asserts disclosure of some of its remaining information would reveal an individual approach to work and pricing and give advantage to a competitor. Upon review, 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 552.1101(a). *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Scarborough also asserts disclosure of its customer information is subject to section 552.1101. However, to the extent the customer information at issue is made available to the public by Scarborough, including but not limited to on its website or social media accounts, it may not be withheld under 552.1101 of the Government Code.

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

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we agree the university may withhold the social security numbers in Scarborough's information under section 552.147 of the Government Code.

In summary, the university must generally withhold the information we have marked under section 552.110(c) of the Government Code. However, to the extent any of the customer information Scarborough seeks to withhold has been made available to the public by Scarborough, including but not limited to on its website or social media accounts, such information is not confidential under section 552.110. The university may withhold the social security numbers in Scarborough's information under section 552.147 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 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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/jm

Ref: ID# 929389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)