



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2022

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

OR2021-04684

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# 927083.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for all contracts between the corporation and Contemporary Services Corporation ("CSC"). Although the corporation takes no position as to whether the submitted information is excepted under the Act, the corporation states release of the submitted information may implicate the proprietary interests of ASM Global/SMG ("SMG") and CSC. Accordingly, the corporation states it notified CSC and SMG 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 received comments from CSC. We have reviewed the submitted arguments and the submitted information.

Initially, 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 SMG explaining why the submitted information should not be released. Therefore, we have no basis to conclude SMG 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 submitted information on the basis of any proprietary interest SMG may have in the information.

Section 552.110(b) of the Government Code states, “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). 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 under section 552.110(b) of the Government Code. However, 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.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. 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 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. Section 552.101 of the Government code also encompasses information that another statute makes confidential. 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 (2008). 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 (2001). 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.

In summary, the corporation must withhold the information we have marked 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/mo

Ref: ID# 927083

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)