



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2022

Mr. Rick Guerrero  
Council  
Houston-Galveston Area Council  
P.O. Box 22777  
Houston, Texas 77227-2777

OR2022-05219

Dear Mr. Guerrero:

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# 930120 (ORR# WILLIAMS-12-7-21).

The Houston-Galveston Area Council (the "council") received two requests from separate requestors for six categories of information pertaining to a specified solicitation number. You state you have released some information to the requestors. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of numerous third parties.<sup>1</sup> Accordingly, you state, and provide documentation demonstrating, the commission 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

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<sup>1</sup> The council notified the following third parties: AG Witt, LLC; Aptim Environmental & Infrastructure, LLC ("Aptim"); Ardurra Group, Inc.; Atkins North America, Inc.; CDR Maguire, Inc.; Constant and Associates, Inc. ("Constant"); Data Transfer Solutions, LLC ("DTS"); DCMC LLC; Dewberry Engineers Inc. ("Dewberry"); Disaster Recovery Services, LLC; Five23 Group, Inc. d/b/a Lumenor Consulting Group ("Five23"); GP Strategies Corporation; H2O Partners, Inc; Hagerty Consulting, Inc.; Hill International, Inc.; Innovative Emergency Management, Inc. ("IEM"); Institute for Building Technology and Safety; Integrated Solutions Consulting, Corp.; iParametrics, LLC; Mission Critical Partners, LLC; MPACT Strategic Consulting LLC ("MPACT"); NewGen Strategies and Solutions, LLC; Safework Inc; SWCA Environmental Consultants, Inc. ("SWCA"); Tetra Tech, Inc.; The CNA Corporation ("CNA"); The Olson Group, Ltd.; Thompson Consulting Services, LLC ("Thompson"); and Witt O'Brien's, LLC.

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 submitted by Aptim, Constant, DTS, Dewberry, Five23, IEM, MPACT, SWCA, CNA, and Thompson.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous a request for information, as a result of which this office issued Open Records Letter No. 2021-29279 (2021). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the council must rely on Open Records Letter No. 2021-29279 as a previous determination and withhold or release the identical information in accordance with that ruling.<sup>3</sup> *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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests 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 council may not withhold the remaining information on the basis of any proprietary interest any of the remaining third parties may have in the information.

DTS generally argues some of its information was supplied with the expectation of confidentiality. We note information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying

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<sup>2</sup> Although the Dewberry cites to section 552.117 of the Government Code, it has not provided any arguments to support this exception. Therefore, we assume Dewberry has withdrawn its claim this section applies to its information. Additionally, although IEM raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume IEM has withdrawn its claim that this section applies to its information. *See* Gov't Code §§ 552.301, .302.

<sup>3</sup> As our ruling is dispositive, we need not address Aptim's and IEM's arguments against disclosure of its information at issue.

information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, the council must release it, notwithstanding any expectation or agreement specifying otherwise.

DTS and Thompson also raise section 552.104 of the Government Code for some of their 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.” Gov’t Code § 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 DTS’s or Thompson’s arguments under section 552.104.

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). Section 552.110(c) of the Government Code excepts from disclosure “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[.]” *Id.* § 552.110(c). Constant, CNA, DTS, Dewberry, Five23, MPACT, SWCA, and Thompson argue 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).<sup>4</sup> Upon review, we find CNA, DTS, Five23, MPACT, SWCA, and Thompson have demonstrated some of their information at issue consists of trade secrets subject to section 552.110(b) or commercial or financial information subject to section 552.110(c). Accordingly, to the extent DTS’s, MPACT’s, SWCA’s, and Thompson’s

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<sup>4</sup> Although Constant cites to former section 552.110(a) of the Government Code in its brief, we understand it to raise current section 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

customer information is not made available to the public by DTS, MPACT, SWCA, and Thompson, including but not limited to on their websites or social medial accounts, the council must withhold DTS's, MPACT's, SWCA's, and Thompson's customer information under section 552.110 of the Government Code. However, to the extent DTS's, MPACT's, SWCA's, and Thompson's customer information is made available to the public by DTS, MPACT, SWCA, and Thompson, including but not limited to on their websites or social media accounts, it may not be withheld under 552.110. Regardless, the council must withhold the information we marked under section 552.110 of the Government Code.<sup>5</sup> However, we find Constant, DTS, Dewberry, MPACT, and SWCA have failed to provide specific factual evidence demonstrating any portion 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 council 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) . . . [I]nformation 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). Constant, DTS, Dewberry, Five23, MPACT, SWCA, and Thompson assert disclosure of some of their remaining information at issue would reveal an individual approach to organizational structure, staffing, internal operations, processes, or other

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<sup>5</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

pricing information and give advantage to a competitor. Upon review, we find Constant, Five23, SWCA, and Thompson have demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, to the extent Constant's and Five23's customer information is not made available to the public by Constant and Five23, including but not limited to on their websites or social medial accounts, the council must withhold Constant's and Five23's customer information under section 552.1101 of the Government Code. However, to the extent Constant's and Five23's customer information is made available to the public by Constant and Five23, including but not limited to on their websites or social media accounts, it may not be withheld under 552.1101. Regardless, the council must withhold the information we marked under section 552.1101 of the Government Code. However, we find Constant, DTS, Dewberry, Five23, MPACT, and SWCA have failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the council may not withhold it on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. We note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the council must withhold all public citizens' dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) 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.”<sup>6</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the council must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Five23 raises section 552.153 of the Government Code. Section 552.153 of the Government Code reads, in relevant part, as follows:

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and

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<sup>6</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

“responsible governmental entity” have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer; [or]

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means [.]

*Id.* § 552.153(a), (b)(2)(A)-(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). Although Five23 raises section 552.153 for some of its information, Five23 does not inform us either that the council is a responsible governmental entity as defined by section 2267.001(11) of the Government Code, or that the information at issue relates to a proposal for a qualifying project that is authorized under chapter 2267 of the Government Code. Thus, the council may not withhold any portion of Five23’s information under section 552.153 of the Government Code.

We note some of the remaining materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to 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 the copyright law and the risk of a copyright infringement suit.

In summary, the council must rely on Open Records Letter No. 2021-29279 as a previous determination and withhold or release the identical information in accordance with that ruling. The council must withhold the information we marked and DTS’s, MPACT’s, SWCA’s, and Thompson’s customer information under section 552.110 of the Government Code; however, to the extent the customer information at issue is made available to the public by DTS, MPACT, SWCA, or Thompson, including but not limited to on their websites or social medial accounts, it may not be withheld. The council must withhold the information we marked and Constant’s and Five23’s customer information under section 552.1101 of the Government Code; however, to the extent the customer information at issue is made available to the public by Constant or Five23, including but not limited to on their websites or social medial accounts, it may not be withheld. The council must withhold all public citizens’ dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The council must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The council must release the remaining information; however, any information protected by copyright may only be released 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,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/

Ref: ID# 930120

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

11 Third Parties  
(w/o enclosures)