



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2022

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2022-06044

Dear Ms. Hojem:

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# 932834 (TPIA Nos. 2022-0011 and 2022-0028).

The Metropolitan Transit Authority of Harris County (the "authority") received two requests from different requestors for information pertaining to a specified request for proposals. You state the authority does not maintain some of the requested information.¹ You also state the authority has released some information to the requestors. 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 1st Response Security; ADM Security Solutions; Allied Universal; Andy Frain Services, Inc. ("AFS"); Blue Shield Security & Protection, Inc.; Champion National Security; G4S Secure Solutions (USA), Inc.; Gulf Coast Security Enterprises, LLC; Inter-Con Security Systems, Inc. ("Inter-Con"); MAYTOF Security Guard Services; Prosegur Services Group, Inc.; Servexo Protective Services; and Vets Securing America. 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

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 AFS and Inter-Con.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the second requestor requested only documents related to the winning bidder from the request for proposal at issue. Thus, the proposals submitted from other bidders are not responsive to the second requestor's request. The authority need not release non-responsive information in response to the second request, and this ruling will not address that information with respect to the second request.

Next, we note Inter-Con argues against the release of some information that was not submitted by the authority. This ruling does not address information that was not submitted by the authority and is limited to the information the authority has submitted for our review.³ *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Additionally, we note 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 info relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude any of the remaining 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 authority may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

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."⁴ *Id.* § 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 authority

² Although Inter-Con raises section 552.305 of the Government Code, we note section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 provides the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See* Gov't Code § 552.305. In addition, although AFS and Inter-Con raise section 552.101 of the Government Code, they make no arguments to support this exception. Therefore, we assume AFS and Inter-Con have withdrawn their claims that this section applies to the submitted information. *See id.* §§ 552.301, .302.

³ As we are able to make this determination, we need not address the arguments against disclosure of this information.

⁴ 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).

must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.⁵

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.” Gov’t Code § 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). 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).

AFS and Inter-Con argue some of their information at issue is subject to section 552.110 of the Government Code. Upon review, we find AFS and Inter-Con have demonstrated some of their information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the authority must withhold the information we marked and AFS’s and Inter-Con’s customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by AFS or Inter-Con, including but not limited to on their websites or social media accounts, it may not be withheld under section 552.110.⁶ Additionally, 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 of the Government Code. In addition, we find AFS and Inter-Con have failed to provide specific factual evidence demonstrating any portion of their 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 authority 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:

⁵ As our ruling is dispositive, we need not address the arguments against disclosure of this information.

⁶ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(a) Except as provided by Section 552.0222, 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). Inter-Con asserts disclosure of some of its remaining information at issue would reveal an individual approach to its work, organizational structure, staffing, internal operations, and processes and give an advantage to its competitors. 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). In addition, we find Inter-Con has failed to provide specific factual evidence demonstrating any portion of its remaining information at issue is subject to section 552.1101(a). Therefore, the authority may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

AFS also asserts some of its remaining information at issue is subject to section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Id. § 552.131(a)-(b). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(b)-(c). Because we have already disposed of AFS's claims under section 552.110, the authority may not withhold any of the remaining information at issue under section 552.131(a) of the Government Code. We note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the authority does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the information at issue is excepted under section 552.131(b) 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 authority must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The authority must withhold the information we marked and AFS's and Inter-Con's customer information under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by AFS or Inter-Con, including but not limited to on their websites or social media accounts, it may not be withheld under section 552.110 of the Government Code. The authority must release the remaining information; however, any information that is subject to copyright may be released only 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 932834

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

13 Third Parties
(w/o enclosures)