



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Mr. Chuong Q. Phung
Assistant City Attorney
City of Grand Prairie
300 West Main Street
Grand Prairie, Texas 75050

OR2022-06624

Dear Mr. Phung:

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# 934804 (GPCA Ref. No. 21-0370).

The City of Grand Prairie (the "city") received a request for the proposals submitted by three companies in response to a specified request for proposals. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of Navia Benefit Solutions, Inc. ("Navia"), Total Administrative Services Corporation ("TASC"), and WEX Health, Inc. ("WEX"). Accordingly, the city states, and provides documentation showing, it notified each third party of the request for information and of its 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 Navia and TASC. We have reviewed the submitted information and the submitted arguments.

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 WEX explaining why its information should not be released. Therefore, we have no basis to conclude WEX has a protected proprietary interest its information at issue, and the city may not withhold any portion of it on that basis. *See*,

e.g., id. § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

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). TASC argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find TASC has demonstrated its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we have indicated 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 TASC, including but not limited to on its website or social media accounts, it may not be withheld under 552.110.¹

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). Navia argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Navia has demonstrated its information at issue constitutes trade secrets. Accordingly, the city must withhold Navia’s information we have indicated under section 552.110(b) of the Government Code.

We note some of the 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 city must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent the customer information at

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

issue is made available to the public by TASC, including but not limited to on its website or social media accounts, it may not be withheld under 552.110. The city must withhold the information we have indicated under section 552.110(b) of the Government Code. The city 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/ba

Ref: ID# 934804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 3 Third Parties
(w/o enclosures)