



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Ms. Janet Moreno Farmer
Assistant Criminal District Attorney
Tarrant County Criminal District Attorney's Office
401 West Belknap
Fort Worth, Texas 76169

OR2022-06625

Dear Ms. Farmer:

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# 933808.

The Tarrant County Purchasing Department (the "department") received a request for information pertaining to a specified request for proposals. Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of Cannon Cochran Management Services, Inc.; Coventry Health Care Workers Comp., Inc.; Dane Street LLC; Injury Management Organization, Inc. ("IMO"); Integer Health Technologies, Inc.; Optimal Outcome Case Management, LLC; TRISTAR Risk Management; and York Risk Services Group, Inc. Accordingly, the department 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 IMO. 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 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 has a protected proprietary interest in the submitted information, and the department 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 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). IMO argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find IMO has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(c) of the Government Code. However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c).

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). As previously noted, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). IMO argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find the information at issue is subject to section 552.0222(b) of the

Government Code and may not be withheld on the basis of section 552.110(b) of the Government Code.

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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a), (b). 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). IMO

asserts some of its information is subject to section 552.1101. Upon review, however, we find the information at issue is subject to section 552.0222(b) of the Government Code and may not be withheld on the basis of section 552.1101(a) of the Government Code. *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101).

The remaining documents also include information that is subject to section 552.136 of the Government Code.¹ Section 552.136 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.110(c) of the Government Code. The department must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The department 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/ba

¹ 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).

Ref: ID# 933808

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 8 Third Parties
(w/o enclosures)