



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2022

Ms. Stephanie Coggins
City Secretary
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2022-06749

Dear Ms. Coggins:

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# 931298 (Reference Nos. 4432, 4436, and 4763).

The City of Amarillo (the "city") received three requests from different requestors for information pertaining to a specified request for proposals. The city states it released some information. Although the city takes no position regarding whether the submitted information is excepted from disclosure under the Act, the city informs us its release may implicate the proprietary interests of the following third parties: ADW Enterprises, LLC; Brightspace Agency, LLC; Gray Media Group, Inc. d/b/a KFDA ("KFDA"); GriffinWink Advertising; Love Communications; Nobox Creative ("Nobox"); SUMA Social Marketing; UCI Digital; and WeUsThem, Inc. Accordingly, the city states, and provides documentation showing, it notified these third parties of the requests for information and of their right to submit arguments to this office. *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).* Additionally, we understand release of the information at issue may implicate the proprietary interests of Cryder Marketing and Advertising. Accordingly, pursuant to section 552.305 of the Government Code, the city was required to notify this interested third party of the request for information and of its right to submit arguments to this office. *See Gov't Code § 552.305(d); see also ORD 542.* We have received comments from KFDA and Nobox. We have considered the submitted arguments and reviewed 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) of the Government

Code 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 received comments from only KFDA and Nobox explaining why the information at issue should not be released. Thus, we have no basis to conclude 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). Therefore, the city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties 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). KFDA and Nobox argue their information at issue consist of trade secrets subject to section 552.110(b).¹ Upon review, we find KFDA and Nobox have demonstrated portions of the information at issue constitute trade secrets. Accordingly, the city must withhold KFDA's and Nobox's client information under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to KFDA and Nobox is made available to the public, including but not limited to on the companies' respective websites or social media accounts, it may not be withheld under section 552.110(b).² Nonetheless, we find KFDA and Nobox have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the city may not withhold any of the remaining information at issue under section 552.110(b) 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

¹ Although KFDA and Nobox cite to former section 552.110(a) of the Government Code in their briefs, we understand them to raise current section 552.110(b) of the Government Code based on the substance of their arguments.

² In this instance, as our ruling is dispositive, we need not address KFDA's and Nobox's remaining argument against disclosure of this information.

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). KFDA and Nobox generally assert section 552.1101 for their remaining information at issue. Upon review, however, we find KFDA and Nobox have failed to provide the specific factual evidence necessary to withhold any portion of the remaining information at issue under section 552.1101(a). Therefore, the city may not withhold any portion of the remaining information at issue under section 552.1101(a) of the Government Code.

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.”³ *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. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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.

³ 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).

In summary, the city must withhold KFDA's and Nobox's client information under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to KFDA and Nobox is made available to the public, including but not limited to on the companies' respective websites or social media accounts, it may not be withheld under section 552.110(b) of the Government Code. The city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 931298

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

cc: 10 Third Parties
(w/o enclosures)