



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Ms. Tiffany Bangs  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2022-07271

Dear Ms. Bangs:

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# 933890 (ORR 21PIA0963).

The Harris County Purchasing Agent (the "county") received a request for information pertaining to Request for Proposals 20/0363, including vendor responses, scoring information, and a copy of the current contracts. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified 1A SmartStart, LLC ("SmartStart"); ALCOLOCK TX, Inc.; Consumer Safety Technology LLC d/b/a Intoxalock ("Intoxalock"); Draeger, Inc.; EZ Monitoring Services; and Recovery Monitoring Solutions Corporation ("Recovery") 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 body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We received comments from Intoxalock, SmartStart, and Recovery. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the county has not submitted the requested contracts. To the extent information responsive to this portion of the request existed on the date the county received the request, we assume the county has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the county has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties at issue explaining why their information should not be released. Therefore, 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 county may not withhold any of the information at issue on the basis of any proprietary interest the third parties at issue may have in it.

Intoxalock asserts that some of its information is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Intoxalock has not directed our attention to any law under which any of its information is considered to be confidential for the purposes of section 552.101. Therefore, we conclude the county may not withhold Intoxalock's information under that section.

Recovery raises section 552.104 of the Government Code for some of its 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 Recovery's arguments under section 552.104.

Section 552.110(b) 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). Section 552.110(c) of the Government Code states:

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). Intoxalock, SmartStart, and Recovery argue some of the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Intoxalock, SmartStart, and Recovery have demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we have marked and 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 the respective companies, including but not limited to on their respective websites or social media accounts, it may not be withheld under section 552.110(c).<sup>1</sup> 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 552.110. Additionally, we find Intoxalock and SmartStart failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Intoxalock, SmartStart, and Recovery argue some of the remaining information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find Intoxalock and Recovery have demonstrated portions of the information at issue constitute trade secrets. Accordingly, the county must withhold the information we have marked and indicated under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by the respective companies, including but not limited to on their respective websites or social media accounts, it may not be withheld under section 552.110(b). 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 552.110(b). Additionally, we find Intoxalock, SmartStart, and Recovery have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the county 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:

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<sup>1</sup> 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, 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.

*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). SmartStart and Recovery argue section 552.1101 is applicable to some of the remaining information. Upon review, we find Recovery has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the county must withhold the information we have indicated under section 552.1101(a) of the Government Code. 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). *See id.* Additionally, we find SmartStart has failed to provide specific factual evidence demonstrating any portion of the rest of any remaining information at issue is subject to section 552.1101(a). Therefore, the county may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 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.). In this instance, we are unable to determine whether some of the information at issue pertains to actual living individuals or fictitious individuals. Therefore, we must rule conditionally. Accordingly, to the extent any dates of birth in the remaining information pertain to a real, living, identifiable individual, the county must withhold those dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue does not pertain to a real, living, identifiable individual, the county may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> See Gov't Code § 552.130. Upon review, we are unable to determine whether some of the information at issue constitutes actual motor vehicle record information, or whether it is fictitious motor vehicle record information created as a sample. Therefore, we must rule conditionally with respect to this information. Accordingly, the county must withhold all visible license plate images, and to the extent the information at issue constitutes actual motor vehicle information, the county must withhold all license plate numbers, states of issuance, and vehicle identification numbers under section 552.130 of the Government Code. To the extent this information consists of fictitious motor vehicle record information, the county may not withhold it on that ground.

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

We note some of the remaining information 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 county must withhold the information we have marked and 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 the respective companies, including but not limited to on their respective websites or social media accounts, it may not be withheld under section 552.110(c). The county must withhold the information we indicated

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<sup>2</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).

under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by the respective companies, including but not limited to on their respective websites or social media accounts, it may not be withheld under section 552.110(b). The county must withhold the information we have indicated under section 552.1101 of the Government Code. To the extent any dates of birth in the remaining information pertain to a real, living, identifiable individual, the county must withhold those dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold all visible license plate images, and to the extent the information at issue constitutes actual motor vehicle information, the county must withhold all license plate numbers, states of issuance, and vehicle identification numbers under section 552.130 of the Government Code. The county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The county 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

Ref: ID# 933890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)