



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2022

Ms. Debra A. Anderson
Assistant General Counsel
Hays County
111 East San Antonio Street, Suite 202
San Marcos, Texas 78666

OR2022-07466

Dear Ms. Anderson:

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# 935373 (R004061).

Hays County (the "county") received a request for bids received for the management of Emergency Rental Assistance Program funds. 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 AG Witt, L.L.C.; Blanco River Regional Recovery Team; IndiSoft, L.L.C.; MPACT Strategic Consulting, L.L.C. ("MPACT"); WSD Digital, L.L.C.; and Yardi Systems, Inc. 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 have received arguments from MPACT. We have considered the submitted arguments and reviewed the submitted information.

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 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 remaining third parties at issue may have in it.

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). 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). MPACT argues its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find MPACT has demonstrated some of its information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we have marked and MPACT’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 MPACT, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110.¹ However, we find IMPACT has failed to provide specific factual evidence demonstrating the 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 county may not withhold any of the remaining information under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

- (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

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

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). MPACT asserts disclosure of its remaining information at issue would reveal an individual approach to its work, organizational structure, staffing, internal operations, and pricing and give advantage to its competitors. Upon review, we find MPACT has failed to provide specific factual evidence demonstrating any portion of the 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) of the Government Code.

In summary, the county must withhold the information we have marked and MPACT'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 MPACT, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The county 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/ba

Ref: ID# 935373

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 6 Third Parties
(w/o enclosures)