



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 9, 2022

Ms. Amanda Brown  
Deputy City Attorney  
City of Denton  
215 East McKinney Street  
Denton, Texas 76201

OR2022-07478A

Dear Ms. Brown:

This office issued Open Records Letter No. 2022-07478 (2022) on March 11, 2022. Since that time, we have received new information that affects the facts on which this letter was based. Consequently, this decision serves as the corrected ruling and is a substitute for Open Records Letter No. 2022-07478. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 951764 (Ref. No. C001564-121621).

The City of Denton (the "city") received a request for the proposals submitted to the city in response to a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of the following third parties: Hunt, Guillot & Associates, LLC ("HGA"); Mas Energy Holdings, LLC ("MAS"); Morrow Energy ("Morrow"); Pine Creek RNG, LLC ("PC-RNG"); and WAGA Energy, Inc. ("WAGA"). Accordingly, you state, and provide documentation demonstrating, the city notified these interested third parties 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 id.* § 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 HGA, MAS, Morrow, PC-RNG, and WAGA.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note Morrow raised sections 552.113 and 552.131 of the Government Code in its brief, but made no arguments explaining how these exceptions are applicable to its information at issue. Additionally, we note

Initially, we note PC-RNG argues against the release of information the city has not submitted to this office for our review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review.<sup>2</sup> *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

HGA, MAS, Morrow, and WAGA assert some of their information at issue is excepted from disclosure under section 552.1101 of the Government Code.<sup>3</sup> Section 552.1101(a) of the Government Code provides:

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.

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MAS also raised section 552.131 of the Government Code in its brief, but made no arguments explaining how this exception is applicable to its information at issue. We also note PC-RNG raised section 552.101 of the Government Code in its brief, but made no arguments explaining how this exception is applicable to its information at issue. Therefore, we do not address these arguments against disclosure of the information at issue.

<sup>2</sup> As we are able to make this determination, we need not address PC-RNG's arguments against disclosure of this information.

<sup>3</sup> Although WAGA does not raise section 552.1101 of the Government Code in its brief, we understand WAGA to raise this exception based on the substance of its arguments.

*Id.* § 552.1101(a). 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). Upon review, we find HGA, Morrow, and WAGA have demonstrated the applicability of section 552.1101(a) to some of the information at issue, including customer information pertaining to MAS. Accordingly, the city must withhold the information we have marked under section 552.1101(a) of the Government Code; however, to the extent MAS's customer information at issue is made available to the public by MAS, including but not limited to on its website or social media accounts, such information may not be withheld under section 552.1101 of the Government Code.<sup>4</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 552.1101(a). *See id.* Additionally, we find HGA, MAS, Morrow, and WAGA have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is subject to section 552.1101(a). Therefore, the city may not withhold any portion of the remaining information under section 552.1101(a) of the Government Code.

HGA, MAS, Morrow, PC-RNG, and WAGA raise section 552.110 of the Government Code for some of the remaining information at issue.<sup>5</sup> 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). Upon review, we find HGA and PC-RNG have demonstrated portions of their information at issue, including customer information pertaining to PC-RNG, constitute commercial or financial

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>5</sup> Although WAGA does not raise section 552.110 of the Government Code in its brief, we understand WAGA to raise this exception based on the substance of its arguments.

information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we have marked and indicated under section 552.110(c) of the Government Code; however, to the extent PC-RNG's customer information at issue is made available to the public by PC-RNG, including but not limited to on its website or social media accounts, such information may not be withheld under section 552.110 of the Government Code.<sup>6</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 of the Government Code. Further, we find HGA, MAS, Morrow, PC-RNG, and WAGA have failed to provide specific factual evidence demonstrating any portion of the rest of 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 city may not withhold any portion of the remaining information under section 552.110 of the Government Code.

Section 552.136(b) 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 government body is confidential."<sup>7</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.1101(a) of the Government Code; however, to the extent MAS's customer information at issue is made available to the public by MAS, including but not limited to on its website or social media accounts, such information may not be withheld under section 552.1101 of the Government Code. The city must withhold the information we have marked and indicated under section 552.110(c) of the Government Code; however, to the extent PC-RNG's customer information at issue is made available to the public by PC-RNG, including but not limited to on its website or social media accounts, such information may not be withheld under section 552.110 of the Government Code. The city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city 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

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<sup>6</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>7</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).

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 951764

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 5 Third Parties  
(w/o enclosures)