



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2022

Mr. Rick Guerrero
Houston-Galveston Area Council
P.O. Box 22777
Houston, Texas 77227-2777

OR2022-10604

Dear Mr. Guerrero:

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# 938356.

The Houston-Galveston Area Council (the "council") received a request for certain information pertaining to a specified request for proposals. The council states it has released some of the requested information. Although the council takes no position as to whether the submitted information is excepted under the Act, the council states release of the submitted information may implicate the proprietary interests of DB Grant Associates, Inc. ("Grant"). Accordingly, the council states it notified Grant of the request for information and of the 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 Grant. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note Grant argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the council has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the council submitted as responsive to the request for information.

Next, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-07439

(2021). In that ruling, we determined the council must: (1) withhold the information we marked under section 552.1101 of the Government Code; however, to the extent Grant's customer information is publicly available on its website, this information may not be withheld under section 552.1101(a); and (2) release the remaining information. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). We note Grant now seeks to withhold some of its information that may have been previously ordered released pursuant to Open Records Letter No. 2021-07439 under sections 552.110 and 552.1101 of the Government Code. As sections 552.110 and 552.1101 of the Government Code make information confidential by law, we will address Grant's arguments under these sections for any information that was previously ordered released. Nevertheless, with respect to the information previously withheld under section 552.1101(a) of the Government Code in Open Records Letter No. 2021-07439, we have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Thus, with respect to the information previously withheld under section 552.1101(a) of the Government Code in Open Records Letter No. 2021-07439, the council must continue to rely on Open Records Letter No. 2021-07439 as a previous determination and withhold the information at issue in accordance with that ruling.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Further, we will address the arguments with respect to the remaining information that was not subject to the previous ruling.

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 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;

¹ As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

(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.

Gov't Code § 552.1101(a). Grant asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, discounts, pricing methodology, cost data, and give advantage to a competitor. However, as discussed above, some of the information Grant seeks to withhold may have been ordered released pursuant to Open Records Letter No. 2021-07439. Since the issuance of the previous ruling, Grant has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find Grant has not taken any measures to protect its information in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. *See id.* § 552.1101. Accordingly, to the extent the information at issue was ordered released pursuant to Open Records Letter No. 2021-07439, we conclude the council may not withhold the information at issue under section 552.1101 of the Government Code.

To the extent the information at issue was not ordered released pursuant to Open Records Letter No. 2021-07439, we find Grant has demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the council must withhold the information we have marked under section 552.1101 of the Government Code; however, to the extent Grant's customer information is made available to the public by Grant, including but not limited to on its website or social media accounts, it may not be withheld under section 552.1101(a).² To the extent Grant's customer information is made available to the public by Grant, including but not limited to on its website or social media accounts, we find Grant has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the council may not withhold it on that basis.

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." *Id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

² In this instance, as our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(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 excepts from disclosure “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[.]” *Id.* § 552.110(c). As noted above, Grant’s information at issue may have been ordered released pursuant to Open Records Letter No. 2021-07439. Since the issuance of the previous ruling, Grant has not disputed this office’s conclusions regarding the release of the information at issue. In this regard, we find Grant has not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Grant substantial harm. *See id.* § 552.110. Accordingly, to the extent the information at issue was ordered released pursuant to Open Records Letter No. 2021-07439, we conclude the council may not withhold the information at issue under section 552.110 of the Government Code.

To the extent the information at issue was not released pursuant to Open Records Letter No. 2021-07439, we find Grant has failed to provide specific factual evidence demonstrating any portion of any of its 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 council may not withhold any of the remaining information under section 552.110 of the Government Code.

In summary, with respect to the information previously withheld under section 552.1101(a) of the Government Code in Open Records Letter No. 2021-07439, the council must continue to rely on Open Records Letter No. 2021-07439 as a previous determination and withhold the information at issue in accordance with that ruling. To the extent the information at issue was not ordered released pursuant to Open Records Letter No. 2021-07439, the council must withhold the information we have marked under section 552.1101 of the Government Code; however, to the extent Grant’s customer information is made available to the public by Grant, including but not limited to on its website or social media accounts, it may not be withheld under section 552.1101(a). The council 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/mo

Ref: ID# 938356

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)