



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2022

Ms. Julie A. Masek
Assistant General Counsel
Texas A&M University System
301 Tarrow Steet, 6th Floor
College Station, Texas 77840-7896

OR2022-11125

Dear Ms. Masek:

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# 942812 (ORR# F002037-090721).

Texas A&M University (the "university") received a request for information pertaining to a specified grant and communications regarding a previous request made by the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of numerous third parties.¹ Accordingly, you state, and provide documentation showing, you notified these 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* 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 Aliviane, Inc. ("Aliviane"); BRAVE Communities ("Brave"); the National Black Nurses Practitioners Association ("NBNPA"); the Texas Familias Council ("TFC"); the Texas Muslim Women's Foundation ("TMWF"); and Texas Rio Grande Legal Aid ("TRLA").² We have reviewed the submitted information and considered the submitted arguments.

¹ We note the university did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

² Although TFC cites section 552.101 of the Government Code, TFC has not provided any arguments to support this exception. Therefore, we assume TFC has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Initially, we note Aliviane argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the university has submitted to us for our review. *See id.* § 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 university submitted as responsive to the requests for information.³

TRLA generally argues some of the information at issue is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. However, TRLA has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See id.* §§ 552.301,302; *see also, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the university may not withhold any of the information at issue under section 552.101 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 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.

³ As we are able to make this determination, we need not address Aliviane’s arguments for this information.

Gov't Code § 552.1101(a). Aliviane, Brave, NBNPA, TFC, and TRLA assert disclosure of some of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or other pricing information and give advantage to a competitor. Upon review, we find Aliviane, NBNPA, and TRLA have demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the university must withhold Aliviane's, NBNPA's, and TRLA's information we have marked under section 552.1101 of the Government Code.⁴ However, we find Aliviane, Brave, NBNPA, TFC, and TRLA have failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the university may not withhold it on that basis.

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). Aliviane, NBNPA, TFC, and TRLA argue some of the information at issue consists of commercial or financial information subject to section 552.110(c).⁵ However, upon review, we find Aliviane, NBNPA, TFC, and TRLA have failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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). NBNPA, TFC, and TRLA argue some of the information at issue consists of trade secrets subject to section 552.110(b). However, upon review, we find NBNPA, TFC, and TRLA have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the university may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.132(b) of the Government Code provides the following:

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

⁵ Although TFC does not cite to subsection 552.110(c) of the Government Code in its brief, we understand TFC to raise this exception based on the substance of its argument.

The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Id. § 552.132(b). TMWF argues the entirety of its information is confidential under section 552.132. Upon review, we find the information at issue is held by the university, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Thus, the university may not withhold any of the remaining information at issue under section 552.132(b) of the Government Code.

We note TMWF claims section 552.138 of the Government Code for some of the remaining information. Section 552.138 provides in relevant part:

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003.

(3) "Victims of trafficking shelter center" means:

(A) a program that:

(i) is operated by a public or private nonprofit organization; and

(ii) provides comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code; or

(B) a child-placing agency, as defined by Section 42.002, Human Resources Code, that provides services to persons who are victims of trafficking under Section 20A.02, Penal Code.

(b) Information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program is excepted from [required public disclosure] if it is information that relates to:

...

(3) the name, home address, home telephone number, or numeric identifier of a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program;

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center, victims of trafficking shelter center, or sexual assault program[.]

Id. § 552.138(a), (b)(3)-(4). Section 552.138 applies only to information maintained by a family violence shelter center, victims of trafficking shelter center, or sexual assault program. *See id.* § 552.138. Therefore, because the information at issue is maintained by the university, and not by a family violence shelter center, victims of trafficking shelter center, or sexual assault program, the university may not withhold any of the remaining information at issue under section 552.138 of the Government Code.

In summary, the university must withhold the information we have marked under section 552.1101 of the Government Code. The remaining information must be released.

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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 942812

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)