



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2022

Ms. Claudene Marshall  
Assistant General Counsel  
Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2022-11569

Dear Ms. Marshall:

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# 942720 (ORR# G000216-012722).

Texas A&M University (the "university") received a request for information pertaining to a specified contract.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.<sup>2</sup> The university also states release of the submitted information may implicate the proprietary interests of Berkeley Research Group, LLC; Candelaria Reyes Consulting, LLC ("CRC"); Kennedy & Company; MGT of America Consulting, LLC; and Smith Group Companies, Inc. Accordingly, the university states, and provides documentation showing, it notified these third parties 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

---

<sup>1</sup> The university states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> Although the university does not raise section 552.136 of the Government Code in its brief, we understand the university to raise this exception based on its markings.

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 CRC.<sup>3</sup> We have reviewed the submitted information and the submitted arguments.<sup>4</sup>

Initially, 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 remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has 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 university may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

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). 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). CRC argues

---

<sup>3</sup> Although CRC raises sections 552.101, 552.113, and 552.131 of the Government Code, CRC has not provided any arguments to support these exceptions. Therefore, we assume CRC has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>4</sup> We note the submitted information includes the requestor's proposal. As we assume the requestor does not seek access to the requestor's own proposal, we do not address the public availability of that information.

some of 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 CRC has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we marked under section 552.110(c) of the Government Code.<sup>5</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(c). Additionally, we find CRC has 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 university may not withhold any of the remaining information at issue 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, 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.

---

<sup>5</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

*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). CRC asserts its remaining information is subject to section 552.1101 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.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find CRC has failed to provide the specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the university may not withhold any of the remaining information at issue under section 552.1101(a).

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 university must withhold the submitted insurance policy numbers under section 552.136 of the Government Code. However, upon review, we find you have failed to demonstrate any of the remaining information at issue consists of access device numbers for purposes of section 552.136. Accordingly, the university may not withhold any portion of the remaining information under section 552.136 of the Government Code.

In summary, the university must withhold the information we marked under section 552.110(c) of the Government Code. The university must withhold the submitted insurance policy numbers under section 552.136 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/mo

Ref: ID# 942720

Enc. Submitted documents

c: Requestor  
(w/o enclosures)