



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2022

Ms. Maya Godbold  
Records Compliance and Management  
Lone Star College System  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2022-11577

Dear Ms. Godbold:

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# 942904 (Ref. No. 22-123).

Lone Star College (the "college") received a request for the bids submitted by ABM Industries, Inc. ("ABM") and WFF Facility Services ("WFF") in response to a specified request for proposals.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of ABM and WFF. 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

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<sup>1</sup> The college 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).

circumstances). We have received comments from ABM. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining notified third party. Thus, we have no basis to conclude the notified 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 college may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining notified third party may have in the information.

Next, we note ABM argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the college 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 college submitted as responsive to the request for information.

ABM and the college raise section 552.104 of the Government Code. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a) (emphasis added). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). In *Boeing*, the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See id.* at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address ABM's arguments under section 552.104. Further, after review of the information at issue and consideration of the college's arguments, we find the college failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the college may not withhold the information under section 552.104(a).

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:

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). ABM argues 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).<sup>2</sup> However, we find ABM has failed to provide specific factual evidence demonstrating the 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 college may not withhold the information at issue 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>3</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the college must withhold the bank account and routing number within the submitted information under section 552.136 of the Government Code. The college 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>2</sup> Although ABM does not raise section 552.110(c) of the Government Code in its brief, we understand ABM to assert this exception based on its arguments.

<sup>3</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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/mo

Ref: ID# 942904

Enc. Submitted documents

c: Requestor  
(w/o enclosures)