



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 28, 2022

Mr. Russell T. Abeln  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2022-12192

Dear Mr. Abeln:

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# 943673 (ORR# 22-1044-1667).

The City of El Paso (the "city") received a request for information pertaining to a specified solicitation number. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified Aetna Life Insurance Company; Dearborn Life Insurance Company d/b/a Blue Cross and Blue Shield of Texas ("Dearborn"); Deer Oaks EAP Services, LLC; Metropolitan Life Insurance Company ("MetLife"); and Trustmark Insurance Company ("Trustmark") 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 submitted by Dearborn, MetLife, and Trustmark. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Trustmark argues its information is not responsive to the request for information. However, we also note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which

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<sup>1</sup> Although the city also raises sections 552.110 and 552.1101 of the Government Code, we note these exceptions protect the interests of third parties, not the interests of governmental bodies themselves. Thus, we do not address the city's arguments under section 552.110 and 552.1101 of the Government Code.

it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the city has submitted the information at issue for our review, we find the city has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

Next, 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 either of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold any portion of the submitted information on the basis of any proprietary interest either of the remaining third parties may have in it.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). 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). After review of the information at issue and consideration of the arguments, we find the city has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the city may not withhold the information at issue under section 552.104(a).

Dearborn, MetLife, and Trustmark raise section 552.110 of the Government Code for some of their information. 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* Gov't Code § 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) 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). MetLife and Trustmark argue some of their information consists of trade secrets subject to section 552.110(b).<sup>2</sup> Upon review, we find MetLife has demonstrated portions of the information at issue constitute trade secrets. Accordingly, the city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information is made available to the public by MetLife, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(b). Nonetheless, we find MetLife and Trustmark have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the city may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code. Dearborn and Trustmark argue some of their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Dearborn has demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Dearborn, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c).<sup>3</sup> Nonetheless, we find Dearborn and Trustmark have failed to provide specific factual evidence demonstrating any portion of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold the remaining information at issue under section 552.110(b) or section 552.110(c).

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:

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<sup>2</sup> Although MetLife cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

- (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.

*Id.* § 552.1101(a). Dearborn asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, internal operations, and pricing methodology and give advantage to a competitor. Upon review, we find Dearborn has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the city must withhold the information we marked under section 552.1101(a) of the Government Code. However, we find Dearborn 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 city may not withhold it on that basis.

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 governmental body is confidential.”<sup>1</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information is made available to the public by MetLife, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(b). The city must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Dearborn, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c). The city must withhold the information we marked under section 552.1101(a) of the Government Code. The city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.

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<sup>1</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).

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,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/be

Ref: ID# 943673

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)