



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2022

Mr. Dane C. Bruun
Attorney for the Port of Corpus Christi Authority
Welder Leshin Lorenz Buchanan Hawn, LLP
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2022-13378

Dear Mr. Bruun:

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# 944467.

The Port of Corpus Christi Authority (the "authority"), which you represent, received a request for bid results pertaining to a specified request for proposals. 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 Savage Services Corporation ("Savage"). Accordingly, you state, and provide documentation showing, you notified Savage of the request for information and of its 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 Savage. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the authority has only submitted some information pertaining to one third party. To the extent information responsive to the remainder of the request existed on the date the authority received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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.”¹ *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). 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). Savage argues its information consists of trade secrets subject to section 552.110(b). Upon review, we find Savage has demonstrated portions of the information at issue constitute trade secrets. Accordingly, the authority must withhold the information we have marked under section 552.110(b) of the Government Code.² However, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Further, we find Savage has failed to provide specific factual evidence demonstrating the remaining information is a trade secret. Therefore, the authority may not withhold any of the remaining information under section 552.110(b) 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;

¹ Although Savage cites to former section 552.110(a) of the Government Code in their briefs, we understand Savage to raise current section 552.110(b) of the Government Code based on the substance of its arguments.

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(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.

(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). Savage asserts disclosure of its remaining information would reveal an individual approach to pricing and give advantage to a competitor. 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 Savage has failed to provide specific factual evidence demonstrating any portion of the remaining information is subject to section 552.1101(a). Therefore, the authority may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the authority must withhold the information we have marked under section 552.110(b) of the Government Code. The authority 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 944467

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)