



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2022

Ms. Stephanie Coggins
City Secretary
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2022-13477

Dear Ms. Coggins:

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# 947498 (GovQA 4925).

The City of Amarillo (the "city") received a request for information pertaining to a specified request for proposals. You state you have released some information. Although the city takes no position regarding whether the submitted information is excepted from disclosure under the Act, the city informs us its release may implicate the proprietary interests of Amarillo Personnel Service d/b/a Express Employment Professionals ("Express"). Accordingly, the city states, and provides documentation showing, it notified Express of the request for information and of its right to submit arguments to this office. *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 Express. We have considered the submitted arguments and reviewed the submitted information.

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." 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) 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). Express argues the information at issue consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c).¹ Upon review, we find Express has demonstrated portions of the information at issue constitute 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.² However, we find Express has failed to provide specific factual evidence demonstrating 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 city may not withhold any of the remaining information at issue under section 552.110 of the Government Code. The city 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

¹ Although Express cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand Express to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of their arguments.

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

Ref: ID# 947498

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)