



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 17, 2022

Mr. Patrick Brady
Associate General Counsel
Texas State Technical College
3801 Campus Drive
Waco, Texas 76705

OR2022-14129

Dear Mr. Brady:

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# 947701 (TSTC PIA No. 19638686).

The Texas State Technical College (the "college") received a request for scoring and evaluation information and the bid proposals of three specified companies pertaining to a request for proposals for Video Content Solution Service- Statewide. We understand the college has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified Panopto, Inc. ("Panopto"); Kaltura, Inc. ("Kaltura"); and Yuja, Inc. ("Yuja") 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 from Yuja. 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 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 Panopto or Kaltura explaining why their information should not be released. Therefore, we have no basis to conclude Panopto or Kaltura have 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 of the information at issue on the basis of any proprietary interest Panopto or Kaltura may have in it.

We note Yuja asserts exceptions to the required public disclosure of information the college has not submitted for our review. This ruling does not address information beyond what the college has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the college submitted as responsive to the request for information. *See id.*

Yuja raises section 552.104 of the Government Code for portions of its information. 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). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d 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 Yuja's arguments under section 552.104.

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). Yuja 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). Upon review, however, we find Yuja 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 any of the information at issue under section 552.110(b) or 552.110(c) of the Government Code. The college must release the submitted 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 947701

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)