



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2022

Ms. Angelie Thomas
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2022-14685

Dear Ms. Thomas:

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# 948951 [PIR# W013842].

The City of Sugar Land (the "city") received a request for scoring information and the top three finalists' dental proposals submitted in response to a specified RFP. Although the city takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Aetna Life Insurance Company ("Aetna"); Cigna Health and Life Insurance Company ("Cigna"); and Humana Insurance Company ("Humana"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Aetna, Cigna, and Humana. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor only seeks information pertaining to scoring and the dental portion of the specified RFP. Accordingly, only scoring information and information pertaining to the dental portion of the RFP is responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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). 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 [required disclosure] 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;
- (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). Additionally, we note section 552.0222(b) lists certain types of information to which sections 552.110 and 552.1101 do not apply. *See id.* § 552.0222(b).

Aetna, Cigna, and Humana raise section 552.110(c) of the Government Code for some of the information at issue, asserting such information consists of commercial or financial information, the release of which would cause substantial competitive harm. Upon review, we find Aetna, Cigna, and Humana have demonstrated some of the information at issue, which we indicated, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent Aetna's, Cigna's, and Humana's customer information is made available to the public by Aetna, Cigna, or Humana, including on their websites or social media accounts, it may not be withheld under section 552.110(c).¹ However, upon review, 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 552.110. In addition, we find Cigna and Humana 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, or is a trade secret. Therefore, the city may not withhold any portion of the remaining information at issue under section 552.110(b) or section 552.110(c) of the Government Code.

Cigna and Humana assert disclosure of some of their remaining information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations and processes, and pricing that will be used in future solicitation or bid documents and give advantage to a competitor. Upon review, 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. In addition, we find Cigna and Humana have failed to provide specific factual evidence demonstrating any portion of its remaining information at issue is subject to section 552.1101(a). Therefore, the city may not withhold any portion of the remaining information at issue under section 552.1101(a) of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, the city must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent Aetna's, Cigna's, and Humana's customer information is made available to the public by Aetna, Cigna, or Humana, including on their websites or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The city must release the remaining responsive information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/jxd

Ref: ID# 948951

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)