



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 22, 2022

Mr. Ryder F. Smith  
Assistant General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409

OR2022-17812

Dear Mr. Smith:

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# 953481.

Texas Tech University System (the "system") received a request for (1) information pertaining to class ring contracts during a stated time period and (2) all communications with certain named entities during a stated time period.<sup>1</sup> Although the system takes no position regarding whether the submitted information is excepted from disclosure under the Act, the System informs us its release may implicate the proprietary interests of the following third parties: American Achievement Corporation, Balfour & Co., Balfour, Inc., Commemorative Brands, Inc., and Taylor Publishing Company (collectively, "Balfour");

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<sup>1</sup> The system states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Additionally, the system states it sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The system also informs us it received the required payment on April 4, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

Jostens, Inc.; Maverick Jackets, Inc.; and Walter Allan Studios. Accordingly, the system states, and provides documentation showing, it notified these third parties of the request for information and of their 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 Balfour.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have received comments from only Balfour 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 submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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." *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 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). Balfour argues 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, we find Balfour has demonstrated

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<sup>2</sup> Although Balfour raises sections 552.101, 552.104, 552.137, and 552.153 of the Government Code, it provides no arguments explaining the applicability of these exceptions to the information at issue. Therefore, we assume Balfour no longer asserts these exceptions. *See* Gov't Code § 552.305.

portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the system must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Balfour is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(c).<sup>3</sup> Nonetheless, we find Balfour has failed to provide specific factual evidence demonstrating any portion of 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 system may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

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:

(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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

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

- (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). Balfour asserts section 552.1101 for its remaining information. Upon review, however, we find portions of the information at issue are subject to section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* Additionally, we find Balfour has failed to provide specific factual evidence demonstrating any portion of the rest of the information at issue is subject to section 552.1101(a). Therefore, the system may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the system must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Balfour is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The system must release the remaining information.<sup>4</sup>

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

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<sup>4</sup> We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Ref: ID# 953481

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 4 Third Parties  
(w/o enclosures)