



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2022

Ms. Kimber Summers
Assistant General Counsel
Texas Woman's University System
P.O. Box 425497
Denton, Texas 76204

OR2022-20729

Dear Ms. Summers:

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# 958182 (TWU TPIA_2022_040).

Texas Woman's University System (the "system") received a request for the proposal submitted by BarkleyREI, LLC ("Barkley") in response to a specified request for proposals excluding any pages labeled as "confidential." Although the system takes no position as to whether the submitted information is excepted under the Act, the system states release of the submitted information may implicate the proprietary interests of Barkley. Accordingly, the system states, and provides documentation showing, it notified Barkley 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 Barkley. We have reviewed the submitted information and the submitted arguments.

Initially, the system notes, and we agree, some of the submitted information is not responsive to the request, which the system has marked. This ruling does not address the public availability of the non-responsive information and the system need not release it to the requestor.

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* 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). Barkley argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Barkley has demonstrated the information at issue constitute trade secrets. Accordingly, the system must withhold the information we have indicated under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by Barkley, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(b).¹

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

(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). Barkley asserts disclosure of some of its information would reveal an individual approach to pricing information and give advantage to a competitor. Upon review, we find Barkley has demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the system must withhold the information we have indicated under section 552.1101 of the Government Code.

In summary, the system must withhold the information we have indicated under section 552.110(b) of the Government Code; however, to the extent the customer information at issue is made available to the public by Barkley, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(b). The system must withhold the information we have indicated under section 552.1101 of the Government Code. The system must release the remaining responsive 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 958182

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)