



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2022

Mr. Steven A. Arellano
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2021-20871

Dear Mr. Arellano:

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# 959675 (File No. 65).

El Paso County (the "county") received a request for specified information related to certain types of projects. Although you raise no exceptions to disclosure, you state release of the submitted information may implicate the proprietary interests of Jordan Foster Construction, LLC ("Jordan"). Accordingly, you state, and provide documentation showing, you notified Jordan of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Jordan. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Jordan argues against the release of information that was not submitted by the county. This ruling does not address information that was not submitted by the county and is limited to the information the county has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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). Jordan argues portions of the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Jordan has demonstrated its customer information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold Jordan’s customer information under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Jordan, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110(c).¹ Further, we find Jordan has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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). Jordan argues some of the remaining information consists of trade secrets subject to section 552.110(b). Upon review, we find Jordan has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(b) 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 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.

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

(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). Jordan asserts disclosure of some of the remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes and give advantage to a competitor. However, we find the information at issue is subject to section 552.1101(b) and it may not be withheld on the basis of section 552.1101(a). *See id.* § 552.1101(b).

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.

In summary, the county must withhold Jordan's customer information under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by Jordan, including but not limited to on its website or social

media accounts, it may not be withheld under section 552.110(c).² The county must release the remaining information; however, any information protected by copyright may only be released 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/eb

Ref: ID# 959675

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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