



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 18, 2022

Mr. R. Brooks Moore  
Deputy General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840-7896

OR2022-20877

Dear Mr. Moore:

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# 959947 (TAMU G001033-042522).

Texas A&M University (the "university") received a request for information pertaining to two specified solicitations. Although the university takes no position as to whether the submitted information is excepted under the Act, the university states release of the submitted information may implicate the proprietary interests of Compass Group USA, Inc. dba Canteen ("Canteen") and VendPro Refreshment Services ("VendPro"). Accordingly, the university states, and provides documentation showing, it notified each third party 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 Canteen. We have reviewed the submitted information and the submitted arguments.

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 VendPro explaining why the submitted information should not be released. Therefore, we have no basis to conclude VendPro has a protected proprietary interest in its submitted information, and the university may not withhold any portion of it

on that basis. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception).

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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Canteen argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Canteen has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we have marked under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by Canteen, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c).<sup>1</sup> However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c).

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 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). Additionally, as previously noted, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Canteen argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find the information at issue is subject to section 552.0222(b) of the Government Code and may not be withheld on the basis of section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

(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 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:

(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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Canteen asserts some of its information should be withheld under section 552.1101. Upon review, however, we find the information at issue is subject to section 552.0222(b) of the Government Code and may not be withheld on the basis of section 552.1101(a) of the Government Code. *See id.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101).

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

Ref: ID# 959947

Enc. Submitted documents

c: Requestor  
(w/o enclosures)