



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2022

Ms. Kaitlyn J. Williams  
Assistant County Attorney  
Harris County  
4800 Fournace Place, 6th Floor East  
Bellaire, Texas 77401

OR2022-22171

Dear Ms. Williams:

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# 962221 (HCOA File No. 22hsp0391).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for bid tabulations and contracts pertaining to the provision of specified services. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: A/W Mechanical Services, LP; The Brandt Companies, LLC ("Brandt"); Fort Bend Mechanical & Construction, LLC; Gray Mechanical Contractors, LLC; LMC Corporation ("LMC"); Magnum Air, Inc. ("Magnum"); and RDI Mechanical, Inc. Accordingly, you state, and provide documentation demonstrating, the system notified these interested third parties of the request for information and of their 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 Brandt, LMC, and Magnum. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note LMC and Magnum argue against the release of information the system has not submitted to this office for our review. This ruling does not address information that was not submitted by the system and is limited to the information the system has

submitted for our review.<sup>1</sup> *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *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 any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Brandt and LMC raise section 552.104 of the Government Code for some of their information at issue. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address the arguments of Brandt and LMC under section 552.104 of the Government Code.

As discussed above, section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the system may not withhold any portion of the submitted information under section 552.104(a) of the Government Code.

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<sup>1</sup> As we are able to make this determination, we need not address the arguments of LMC and Magnum against disclosure of this information.

Brandt and Magnum raise section 552.110 of the Government Code for some of their information at issue. Section 552.110(b) 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). 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). 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). Upon review, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find Brandt has failed to provide specific factual evidence demonstrating any portion of the rest of its information at issue constitutes a trade secret or commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the system may not withhold any portion of the submitted information under section 552.110 of the Government Code.

Brandt, LMC, and Magnum raise section 552.1101 of the Government Code for some of their information at issue. Section 552.1101 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 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[.]

*Id.* § 552.1101(a), (b)(1). 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). Upon review, we find some of the information at issue is subject to sections 552.0222(b) and 552.1101(b) of the Government Code and may not be withheld on the basis of section 552.1101(a). *See id.* §§ 552.0222(b), .1101(b)(1). Additionally, we find Brandt 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 portion of the submitted information under section 552.1101(a) of the Government Code.

LMC raises section 552.153 of the Government Code for its information at issue. Section 552.153 of the Government Code provides, in relevant part:

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer; [or]

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means [.]

*Id.* § 552.153(a), (b)(1)-(2)(A)-(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). Although LMC raises section 552.153 for its information at issue, LMC does not inform us either that the system is a responsible governmental entity as defined by section 2267.001(11) of the Government Code, or that the information at issue relates to a proposal for a qualifying project that is authorized under chapter 2267 of the Government Code. Therefore, the system may not withhold any portion of the submitted information under section 552.153 of the Government Code. The system must release the submitted 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 962221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 7 Third Parties  
(w/o enclosures)