



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2022

Mr. Reggie Hollins
Legal Technology Specialist
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2022-23065

Dear Mr. Hollins:

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# 963581 (ORR# PUR-R007148).

The City of Plano (the "city") received a request for information pertaining to a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of DELTAWRX; National Public Safety Group ("NPSG"); PRI Management Group ("PRI"); Sciens LLC; Scientia Consulting Group, Inc.; and Wilbourne Consulting, LLC. Accordingly, you state, and provide documentation demonstrating, the city 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 submitted by NPSG and PRI. We have considered the submitted arguments and reviewed the submitted information.

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 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 city may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

NPSG and PRI raise section 552.110 of the Government Code for some of their information at issue. 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). Upon review, we find NPSG and PRI have demonstrated portions of the information at issue constitute trade secrets. Accordingly, the city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information is made available to the public by NPSG or PRI, including but not limited to on their websites or social media accounts, it may not be withheld under 552.110.¹ Further, we find NPSG and PRI have 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 city may not withhold any 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:

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

- (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). PRI asserts disclosure of some of its remaining information would reveal an individual approach to organizational structure, staffing, and pricing and give advantage to a competitor. However, upon review, we find PRI has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the city may not withhold it on that basis.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining materials at issue 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 city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the customer information is made available to the public by NPSG or PRI, including but not limited to on their websites or social media accounts, it may not be withheld under 552.110 of the Government Code. The city must

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city 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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/jm

Ref: ID# 963581

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)