KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2022

Ms. June B. Harden
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-24787

Dear Ms. Harden:

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# 967211 (PIR Nos. R012794 and R012804).

The Office of the Attorney General (the "OAG") received two requests from different requestors for certain information pertaining to a specified request for proposals, including the signed contract. The OAG states it will release some responsive information. Although the OAG takes no position regarding whether the submitted information is excepted from disclosure under the Act, the OAG informs us its release may implicate the proprietary interests of Maximus, Inc. ("Maximus") and SecureOne Outsource Solutions, Inc. Accordingly, the OAG states, and provides documentation showing, it notified these third parties of the requests for information and of their right to submit arguments to this office. *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 Maximus. 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) of the Government Code 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 received comments from only Maximus explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *See, e.g.*, *id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the OAG may not withhold the submitted information on the basis of any proprietary interest the remaining third party may have in the information.

Maximus raises section 552.104 of the Government Code for a portion of its information. 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 Maximus's arguments under section 552.104 of the Government Code.

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 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
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> (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). Maximus argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c).[1] Upon review, we find Maximus has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the OAG must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Maximus is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(c).[2] Nonetheless, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). Additionally, we find Maximus has 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 OAG may not withhold any portion 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:
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> (1) reveal an individual approach to:
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> (A) work;
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> (B) organizational structure;
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> (C) staffing;
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> (D) internal operations;
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> (E) processes; or

[1] Although Maximus cites to former section 552.110(a) of the Government Code in its brief, we understand it to raise current section 552.110(b) of the Government Code based on the substance of its arguments.

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

> (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
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> (2) give advantage to a competitor.
>
> (b) The exception to disclosure provided by Subsection (a) does not apply to:
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> (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or
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> (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). Maximus asserts section 552.1101 for some of its remaining information at issue. Upon review, however, we find the remaining information at issue is subject to section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* Therefore, the OAG may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.136 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."[3] *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the OAG must withhold the insurance policy numbers, partial bank account numbers, and partial credit card numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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.

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[3] 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).

In summary, the OAG must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Maximus is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(c) of the Government Code. The OAG must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The OAG must release the remaining information; however, any information subject to 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 967211

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)