



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2022

Mr. Jeffrey T. Pender
Deputy General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR2022-27569

Dear Mr. Pender:

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# 971306.

The Texas Department of Housing and Community Affairs (the "department") received a request for a specified procurement packet and contract. You state the department has released the requested procurement packet. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Yardi Systems, Inc. ("Yardi"). Accordingly, you state, and provide documentation showing, the department notified Yardi of the request for information and of the 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 Yardi. We have considered the submitted arguments and reviewed the submitted information.

Yardi raises section 552.104 of the Government Code for a portion of the submitted 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." Gov't Code § 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 Yardi's arguments under section 552.104.

Next, we note the submitted information consists of a major contract subject to section 322.020 of the Government Code. Section 322.020 provides, in relevant part:

(a) In this section, "major contract" means:

...

(2) a contract, including an amendment, modification, renewal, or extension:

(A) for which notice is not required under a section listed in [s]ubdivision (1);

(B) that is not a purchase order, an interagency contract, or a contract paid only with funds not appropriated by the General Appropriations Act; and

(C) with a value that exceeds \$50,000.

Id. § 322.020(a)(2). Section 322.020(c)(1) states the Legislative Budget Board (the "board") shall post on the internet each major contract of a state agency. *Id.* § 322.020(c)(1). Further, section 322.020(d) provides that the board shall allow public access to the information posted under 322.020, except for information that is not subject to disclosure under the Act. *Id.* § 322.020(d). Although Yardi raises sections 552.110 and 552.1101 of the Government Code for portions of the information subject to section 322.020, we note section 552.0222 provides that the exceptions to disclosure provided by sections 552.110 and 552.1101 do not apply to a contract described by section 322.020(c), excluding any information that was properly redacted under subsection (d) of that section. *See id.* § 552.0222(b)(2). We note the board posted the contract at issue on the internet and none of the information at issue was withheld from public disclosure pursuant to section 322.020(d). Therefore, because section 552.0222(b)(2) expressly states sections 552.110 and 552.1101 do not apply to a contract described by section 322.020, we do not address Yardi's arguments against disclosure under these exceptions for the information at issue and the information at issue may not be withheld on that basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
- (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;
- (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or
- (5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

Id. § 552.137(c). Although Yardi seeks to withhold an e-mail address in the submitted contract, we find the e-mail address at issue is specifically excluded by subsection (c). Therefore, the e-mail address at issue may not be withheld under section 552.137 of the Government Code. *Id.* The submitted information must be released.¹

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/jm

¹ Although Yardi raises other exceptions to disclosure, because Yardi has not provided any arguments to support these remaining exceptions, we assume Yardi has withdrawn its claims these sections apply to the information at issue. *See* Gov't Code §§ 552.301, .302.

Ref: ID# 971306

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)