



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2022

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78722-3247

OR2022-27613

Dear Mr. Miles:

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# 971361 (HHSC ORR No. A06212022.0450021).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified solicitation.<sup>1</sup> Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of this information may implicate the proprietary interests of Maximus, Inc. ("Maximus"). Accordingly, the commission states, and provides documentation showing, it notified Maximus of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Maximus. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, in a letter dated July 26, 2022, the commission states it wishes to withdraw its request for an open records decision with respect to some of the submitted information because the requestor has voluntarily withdrawn the request for that information. This ruling does not address the public availability of information the requestor no longer seeks.

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<sup>1</sup> The commission states, and provides documentation showing, it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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). 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). 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). Upon review, we find Maximus has demonstrated its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, with the exception of the information we have marked, the commission must withhold the information we have indicated 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 Maximus, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c). However, we find the information we have marked is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Therefore, the commission may not withhold the information subject to section 552.0222 of the Government Code we have marked under section 552.110(b) or section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code 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; 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). Maximus asserts some of its information is excepted from disclosure under section 552.1101. Upon review, however, we find the 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.* § 552.1101(b) (listing certain types of information not excepted under section 552.1101). Therefore, the commission may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, with the exception of the information subject to section 552.0222 of the Government Code we have marked, the commission must withhold the information we have indicated 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 Maximus, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c). The commission 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/jxd

Ref: ID# 971361

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third party  
(w/o enclosures)