



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2022

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

OR2022-27999

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# 971692 (PIR No. R012982).

The Office of the Attorney General (the "OAG") received a request for four points of information pertaining to a specified request for proposals. 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 the following third parties: CSG Government Solutions ("CSG"); Gartner, Inc. ("Gartner"); Grant Thornton Public Sector, LLC ("Grant Thornton"); Guidehouse, Inc. ("Guidehouse"); KPMG, LLP ("KPMG"); and Maximus, Inc. ("Maximus"). Accordingly, the OAG states, and provides documentation showing, it notified these third parties of the request 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 CSG, Gartner, Grant Thornton, KPMG, and Maximus. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note most of the submitted information, which we marked and indicated, was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2022-08899 (2022). In that ruling, we determined the OAG: (1) must withhold the information we marked and indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to CSG, Gartner, and Maximus is made available to the public, including but not limited to on the companies' respective websites or social media accounts, it may not be withheld under section 552.110(c) of the Government Code; (2) must withhold the information we marked under section 552.1101(a) of the Government Code; and (3) must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. We note KPMG now seeks to withhold information that was previously ordered released by the prior ruling under sections 552.110 and 552.1101 of the Government Code. Because information subject to sections 552.110 and 552.1101 is deemed confidential by law, we will address the arguments of KPMG under sections 552.110 and 552.1101 of the Government Code for any previously released information. Nonetheless, except with regard to KPMG's information, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to the remaining information at issue. Accordingly, except with regard to KPMG's information, we conclude the OAG must continue to rely on Open Records Letter No. 2022-08899 as a previous determination and withhold or release the information we marked and indicated in accordance with that ruling.<sup>1</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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

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) 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 not received comments from Guidehouse explaining why the information at issue should not be released. Thus, we have no basis to conclude Guidehouse has 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 OAG may not withhold the information at issue on the basis of any proprietary interest Guidehouse may have in the information.

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
- (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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110(b) does not apply. *See id.* § 552.0222(b). Grant Thornton, KPMG, and Maximus each argue its information at issue is subject to section 552.110(b) of the Government Code.<sup>2</sup> Upon review, however, we find some of the information at issue is subject to section 552.0222(b), and it may not be withheld on the basis of section 552.110(b). Additionally, we note the remaining information at issue pertaining to KPMG was previously ordered released pursuant to Open Records Letter No. 2022-08899, and KPMG did not object to release of the information at issue at that time. Since the issuance of the previous ruling, KPMG has not disputed this office's

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<sup>2</sup> Although Grant Thornton and Maximus cite to former section 552.110(a) of the Government Code in their briefs, we understand these companies to raise current section 552.110(b) of the Government Code based on the substance of their arguments.

conclusions regarding the release of the information at issue. In this regard, we find KPMG has not taken any measures to protect its information in order for this office to conclude the information now qualifies as a trade secret. *See id.* § 552.110(b). Therefore, we conclude the OAG may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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(c) does not apply. *See id.* § 552.0222(b). Grant Thornton, KPMG, and Maximus each argue its information at issue is subject to section 552.110(c) of the Government Code.<sup>3</sup> Upon review, however, we find some of the information at issue is subject to section 552.0222(b), and it may not be withheld on the basis of section 552.110(c). Additionally, as mentioned above, the remaining information at issue pertaining to KPMG was previously ordered released pursuant to Open Records Letter No. 2022-08899, and KPMG did not object to release of the information at issue at that time. Since the issuance of the previous ruling, KPMG has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find KPMG has not taken any measures to protect its information in order for this office to conclude the information now qualifies as commercial or financial information, the release of which would cause KPMG substantial harm. *See id.* § 552.110(c). Therefore, we conclude the OAG may not withhold any of the remaining information at issue under 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,

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<sup>3</sup> Although Grant Thornton cites to former section 552.110(b) of the Government Code in its brief, we understand Grant Thornton to raise current section 552.110(c) of the Government Code based on the substance of its arguments.

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.

*Id.* § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101 does not apply. *See id.* § 552.0222(b). Gartner, KPMG, and Maximus each assert its information at issue is excepted from disclosure under section 552.1101(a). Upon review, however, we find some of the information at issue consists of information subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b). Additionally, we note the remaining information at issue pertaining to KPMG was previously ordered released in Open Records Letter No. 2022-08899, and KPMG did not object to release of the information at issue at that time. Since the issuance of the previous ruling, KPMG has not disputed this office's conclusions regarding the release of the information at issue. In this regard, we find KPMG has not taken any measures to protect the information at issue in order for this office to conclude the information now qualifies as proprietary information for purposes of section 552.1101. Therefore, the OAG may not withhold any of the remaining information at issue under section 552.1101 of the Government Code.

In summary, the OAG must continue to rely on Open Records Letter No. OR2022-08899 as a previous determination and withhold or release the information we marked and indicated in accordance with that ruling. The OAG 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

Ref: ID# 971692

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 6 Third Parties  
(w/o enclosures)