



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2022

Ms. Laura Cedillo  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2022-29293

Dear Ms. Cedillo:

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# 973724 (Ref. No. W457082-070122).

The City of San Antonio (the "city") received a request for the evaluation documents and winning proposal for a specified request for proposal. 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 Inter-Con Security Systems, Inc. ("Inter-Con"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its 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 Inter-Con. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted the score sheets pertaining to the request for proposals specified in the present request. To the extent any additional information responsive to the request existed on the date the city received the present request, we assume the city has already released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Although Inter-Con raises section 552.305 of the Government Code, we note section 552.305 is not an exception to disclosure under the Act. Rather, section 552.305 provides the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See* Gov't Code § 552.305.

Inter-Con generally argues its information is exception from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. However, Inter-Con has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See id.* §§ 552.301, .302; *see also, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code.

Inter-Con raises section 552.110 of the Government Code for some of its information.<sup>1</sup> 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.” 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:

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). Inter-Con argues some of its information consists of trade secrets and commercial or financial information subject to section 552.110(c). Upon review, we find Inter-Con demonstrated portions of its information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the

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<sup>1</sup> Although Inter-Con cites to former subsections 552.110(a) and 552.110(b) of the Government Code in its briefs, we understand Inter-Con to raise current subsections 552.110(b) and 552.110(c) based on the substance of its arguments.

information we have marked under section 552.110(c) of the Government Code.<sup>2</sup> However, to the extent any of the customer information Inter-Con seeks to withhold has been made available to the public by Inter-Con, including but not limited to on its website or social media accounts, such information is not confidential under section 552.110(c). Further, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Additionally, we find Inter-Con has failed to provide specific factual evidence demonstrating 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(b) or 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part, as follows:

(a) Except as provided by [s]ection 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 [required disclosure] if the vendor, contractor, potential vendor, or potential contract 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) organization 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). Inter-Con raises section 552.1101(a) of the Government Code for portions of its remaining information, asserting disclosure of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes. We find some of the remaining information consists of information subject to section 552.0222(b) and may not be withheld on the basis of section

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

552.1101(a). *See id.* § 552.0222(b). Further, we find Inter-Con has failed to provide specific factual evidence demonstrating any portion of its remaining information is subject to section 552.1101(a). Therefore, the city may not withhold any portion of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding 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.”<sup>3</sup> *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 city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.110(c) of the Government Code; however, to the extent any of the customer information Inter-Con seeks to withhold has been made available to the public by Inter-Con, including but not limited to on its website or social media accounts, such information is not confidential under section 552.110(c). The city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city 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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jm

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<sup>3</sup> 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).

Ref: ID# 973724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)