



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2022

Ms. Cynthia Tynan
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West Seventh Street
Austin, Texas 78701-2903

OR2022-30648

Dear Ms. Tynan:

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# 976666 (OGC #206764).

The University of Texas System (the "system") received a request for specified contracts during a defined period of time. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Lighthouse Services, L.L.C., a division of Syntrio Lighthouse Services ("Lighthouse"), and Navex Global ("Navex"). Accordingly, you state, and provide documentation showing, you notified these third parties 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 Lighthouse and Navex. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is subject to section 2261.253 of the Government Code. This section provides, in relevant part, as follows:

(a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed[.]

Gov't Code § 2261.253(a)(1). The contract is between the system, a state agency, and Lighthouse, a private vendor, for the purchase of goods or services. Further, the contract has neither expired nor been completed. Although Lighthouse raises section 552.110 of the Government Code for portions of the information at issue, we note section 552.0222 of the Government Code provides, in relevant part, as follows:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

(1) a contract described by Section 2261.253(a), excluding any information that was properly redacted under Subsection (e) of that section[.]

Id. § 552.0222(b)(1). We have no indication any of the information at issue was properly redacted under section 2261.253(e). Although Lighthouse raises section 552.110, section 552.0222 expressly states this exception does not apply to a contract described by section 2261.253(a). Accordingly, we do not address Lighthouse's arguments against disclosure of the information we marked under this exception. As no other exceptions to disclosure have been raised, the system must release the information we marked.

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." *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). 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). Section 552.1101 of the Government Code provides, in relevant part, as follows:

(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 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) 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). Navex argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Navex has demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the system must withhold the information we marked under section 552.110(c) of the Government Code.¹ However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110. Therefore, the system may not withhold any of the remaining information under section 552.110 of the Government Code.

Navex raises section 552.1101(a) of the Government Code for some of its remaining information. However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b). Therefore, the system may not withhold the remaining information at issue under section 552.1101(a).

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

We note, and Navex asserts, some of the remaining information 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 copyright law and the risk of a copyright infringement suit.

In summary, the system must withhold the information we marked under section 552.110(c) of the Government Code. The system must release the remaining information; however, any information subject to copyright may be released only 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 976666

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)