



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2022

Ms. Nelly R. Herrera
Vice Chancellor and General Counsel
The Texas State University System
601 Colorado Street
Austin, Texas 78701-2904

OR2022-32354

Dear Ms. Herrera:

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# 976032 (File Nos. 22066.4, 22066.6, and 22066.19).

Texas State University (the "university") received three requests from different requestors for certain information pertaining to a specified request for proposals. 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 A-L Tier II, L.L.C./Learfield Communications, L.L.C. d/b/a LEARFIELD; Peak Sports MGMT, L.L.C.; Playfly Sports Properties, L.L.C. ("Playfly"); and Van Wagner Sports & Entertainment, L.L.C. 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 Playfly. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 any remaining notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining notified third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest any remaining notified third party may have in the information.

Section 552.110(b) of the Government Code states, “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 excepts from disclosure “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[.]” *Id.* § 552.110(c).

Playfly argues some of its information at issue consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, however, we find Playfly has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Accordingly, the university may not withhold any portion of the submitted information under section 552.110 of the Government Code. As no further exceptions to disclosure have been raised, the university must release the submitted 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 976032

c: 3 Requestors

4 Third Parties