



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Ms. Jennifer Burnett
Assistant General Counsel & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2903

OR2022-33513

Dear Ms. Burnett:

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# 980279 (OGC# 207025).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for certain information pertaining to a specified bid solicitation. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of the following third parties: Amtech Solutions, Inc. ("Amtech"); Lerch Bates; Price Consulting, Inc.; Simpson Gumpertz & Heger ("SGH"); SOCOTEC; Walter P. Moore and Associates, Inc. ("WPM"); and Wiss, Janey, Elstner Associates, Inc. Accordingly, you state, and provide documentation demonstrating, the university notified these interested third parties of the request for information and of their 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 Amtech, SGH, and WPM. We have considered the submitted arguments and reviewed the submitted information.¹

Initially, we understand WPM to argue its information at issue is not responsive to the present request for information. However, we note the Act requires a governmental body

¹ We note the requestor is a representative of Thompson Engineering ("Thompson"), and the submitted information includes Thompson's proposal. As we assume the requestor does not seek access to Thompson's own proposal, we do not address the public availability of that information.

to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the university has submitted the information at issue for our review, we find the university has made a good-faith effort to submit information that is responsive to the request. Thus, we will 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) 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 of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have 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 university may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Amtech, SGH, and WPM raise section 552.110 of the Government Code for some of the information at issue. Section 552.110(b) states, "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). Section 552.110(c) 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). Upon review, we find Amtech, SGH, and WPM have demonstrated portions of the information at issue, including client information pertaining to Amtech and WPM, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the university must withhold the information we have marked and 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 Amtech and WPM, including but not limited to on their website or social media accounts, such information may not be withheld under section 552.110 of the Government

Code.² Additionally, we find Amtech and WPM have failed to provide specific factual evidence demonstrating any portion of 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 university may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Amtech and WPM raise sections 552.1101(a) of the Government Code for some of the remaining information at issue. Section 552.1101(a) provides:

[I]nformation 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.

Id. § 552.1101(a). Upon review, we find Amtech and WPM have failed to provide the specific factual evidence necessary to withhold any portion of the remaining information at issue under section 552.1101(a) of the Government Code, and the university may not withhold it on that basis.

We note some of the remaining information appears to 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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 the copyright law and the risk of a copyright infringement suit.

In summary, the university must withhold the information we have marked and 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 Amtech and WPM, including but not limited to on their website or social media accounts, such information may not be withheld under section 552.110 of the Government Code. The university must release the remaining information; however, any information subject to copyright may only be released 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/pt

Ref: ID# 980279

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)