



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78722-3247

OR2022-33519

Dear Mr. Miles:

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# 980063 (Ref. No. A08102022.0450010).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to three specified contracts. The commission will release some information. Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of this information may implicate the proprietary interests of Cooper Consulting Company and Deloitte Consulting ("Deloitte"). Accordingly, the commission states, and provides documentation showing, it notified these third parties of the request for information and of the right to submit arguments to this office as to why the information at issue 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 Deloitte. 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 the remaining third party explaining why its information should not be released. Therefore, we have no basis to conclude the remaining 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 commission may not withhold any of the information at issue on the basis of any proprietary interest the remaining third party may have in it.

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). Section 552.110(c) of the Government Code states:

- (c) 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). Deloitte argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Deloitte has demonstrated its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we have 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 Deloitte, including but not limited to on its website or social media accounts, it may not be withheld under 552.110(c).¹ The commission must release the remaining information.²

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

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

² We note some of the information being released includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See Gov’t Code* § 552.147(b).

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,

Sarah E. Reese
Attorney
Open Records Division

SER/pt

Ref: ID# 980063

Enc. Submitted documents

c: Requestor
(w/o enclosures)