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ATTORNEY GENERAL OF TEXAS

November 4, 2022

Mr. Kieran Hillis
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2022-34451

Dear Mr. Hillis:

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# 983101 (Ref. No. 511-22).

The Office of the Governor (the "governor's office") received a request for the winning proposal submitted in response to a specified request for proposals and the related contract. 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 CohnReznick, LLP ("CohnReznick"). 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 CohnReznick. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-30903 (2022). In that ruling, we determined the governor's office (1) may withhold the information you marked under section 552.111 of the Government Code; (2) must withhold the information we marked and indicated under section 552.110(c) of the Government Code; however, to the extent any of the customer information at issue has been made available to the public by these third parties, including but not limited to on their respective website or social media accounts, such information is not confidential under

section 552.110; and (3) must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the information at issue is subject to the previous ruling, we conclude the governor's office must continue to rely on Open Records Decision No. 2022-30903 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information at issue is not subject to the previous ruling, we will address the submitted arguments.

CohnReznick raises section 552.110 of the Government Code for its information. 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). CohnReznick argues some of its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find CohnReznick demonstrated portions of its information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the governor's office must generally withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent CohnReznick's customer information is publicly available on its website, including but not limited to its website or social media accounts, that information may not be withheld under section 552.110(c) of the Government Code.² Additionally, we find CohnReznick has failed to demonstrate any

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

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

portion of the remaining information constitutes trade secrets or commercial or financial information, the release of which would result in substantial competitive harm. Thus, the governor's office may not withhold any of the remaining information under section 552.110 of the Government Code.

In summary, the extent the requested information is subject to the previous ruling, we conclude the governor's office must continue to rely on Open Records Decision No. 2022-30903 as a previous determination and withhold or release the identical information in accordance with that ruling. The governor's office must generally withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent CohnReznick's customer information is publicly available on its website, including but not limited to its website or social media accounts, that information may not be withheld under section 552.110(c) of the Government Code. The governor's office 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/pt

Ref: ID# 983101

Enc. Submitted documents

c: Requestor
(w/o enclosures)
