



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Ms. Majel E. Wallen
Assistant District Attorney
Comal County
199 Main Plaza, Suite 2007
New Braunfels, Texas 78130-5161

OR2022-36278

Dear Ms. Wallen:

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# 986188 (Ref. No. 220R-150).

The Comal County Criminal District Attorney's Office (the "district attorney's office") received a request for all contracts with Tyler Technologies Software Company ("Tyler") during a specified timeframe. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.1101, and 552.130 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Tyler. 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 considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the notified third party. Thus, we have no basis to conclude the 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 district attorney's office may not withhold any portion of the submitted information on the basis of any proprietary interest the notified third party may have in the information.

We understand the district attorney's office to assert some of the submitted information is excepted from disclosure based on a non-disclosure agreement. However, information is not confidential under the Act simply because the party that submits the information requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, the district attorney's office must release it, notwithstanding any expectations or agreement specifying otherwise.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Thus, the district attorney's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov't Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the submitted information. Thus, we conclude the district attorney's office may not withhold the submitted information under section 552.104(a).

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although you argue the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your argument under section 552.110.

You also claim the submitted information is subject to section 552.1101 of the Government Code. However, section 552.1101 protects only the interests of a vendor, contractor, potential vendor, or potential contractor that has provided information to a governmental body, not those of the governmental body itself. *See id.* § 552.1101(c). Therefore, we do not consider your argument under section 552.1101.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we find you failed to demonstrate the remaining information is subject to section 552.130 of the Government Code. Accordingly, the district attorney's office may not withhold any of the submitted information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."¹ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the district attorney's office must withhold bank account numbers in the submitted information under section 552.136 of the Government Code. The district attorney's office 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,

Michelle Garza
Attorney
Open Records Division

MRG/jxd

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 986188

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)