



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2022

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

OR2022-36983

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# 987746 (ORR# A09092022.0450039).

The Texas Health and Human Services Commission (the "commission") received a request for the submitted proposal and spending to date for contract number HHS0009592. You state the commission will release some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of The Evolvers Group ("Evolvers"). Accordingly, you state, and provide documentation showing, you notified Evolvers of the request for information and of its 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 Evolvers. We have considered the submitted arguments and reviewed the submitted information.

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[.]" Gov't Code § 552.110(c). Evolvers argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Evolvers has demonstrated the 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 marked under section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [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). Evolvers asserts disclosure of some of its information would reveal an individual approach to internal operations or processes and give advantage to a competitor. Upon review, we find Evolvers has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the commission must withhold the information we have marked under section 552.1101 of the Government Code. However, we find Evolvers has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the commission may not withhold it on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Further, we note the names of living members of the public are generally not highly intimate or

embarrassing. *See* Open Records Decision Nos. 551 at 3 (disclosure of person's name, address, or telephone number not invasion of privacy). Upon review, we find Evolvers has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the commission may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the commission must withhold the information we have marked under section 552.110(c) of the Government Code. The commission must withhold the information we have marked under section 552.1101 of the Government Code. The commission must release the remaining information.¹

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/pt

Ref: ID# 987746

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)

¹ We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).