



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2022

Mr. Matthew Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2022-38552

Dear Mr. Entsminger:

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# 986696 (Ref. No. 1078763-1).

Travis County (the "county") received a request for seven categories of information related to a named entity's election management system. The county states it does not maintain some of the requested information.¹ Although the county takes no position regarding whether the submitted information is excepted from disclosure under the Act, the county informs us its release may implicate the proprietary interests of Konnech, Inc. ("Konnech"). Accordingly, the county states, and provides documentation showing, it notified Konnech of the request for information and of its right to submit arguments to this office. *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 Konnech. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Konnech asserts some of its information at issue is not responsive to the present request for information. However, we note the Act requires a governmental body

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

to make a good-faith effort to relate a request for information to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the county has submitted the information at issue for our review, we find the county has made a good-faith effort to relate the present request to information within its possession or control and submit information to this office that is responsive to the request. Accordingly, we will consider whether information at issue is excepted from disclosure under the Act.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov’t Code § 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). Konnech argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Konnech has demonstrated the information at issue constitute trade secrets. Accordingly, the county must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to Konnech is made available to the public, including but not limited to on the company’s website or social media accounts, it may not be withheld under section 552.110(b) of the Government Code.

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

- (a) Except as provided by Section 552.0222, information 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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

(1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

(2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

Id. § 552.1101(a)-(b). Additionally, we note sections 552.0222(b) and 552.1101(b) list certain types of information to which section 552.1101(a) does not apply. *See id.* §§ 552.0222(b), .1101(b). Konnech asserts disclosure of some of its remaining information would reveal an individual approach to pricing methodology or other pricing information that will give advantage to a competitor. Upon review, we find Konnech has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the county must withhold the information we marked under section 552.1101(a) of the Government Code. However, we find the remaining information at issue is subject to section 552.0222(b) or section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* Therefore, the county may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the county must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to Konnech is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(b) of the Government Code. The county must withhold the information we marked under section 552.1101(a) of the Government Code. The county 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 986696

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)