



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Mr. Spencer Walker  
Public Information Coordinator  
State Bar of Texas  
1414 Colorado Street  
Austin, Texas 78701

OR2016-18272

Dear Mr. Walker:

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# 622376.

The State Bar of Texas (the "state bar") received a request for two specified contracts and the related invoices during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Fastcase, Inc. ("Fastcase") and Lawriter, LLC ("Lawriter"). Accordingly, you state, and provide documentation showing, you notified Fastcase and Lawriter of the request for information and of their rights 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 Fastcase. We have reviewed the submitted information and the submitted arguments.

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 Lawriter explaining why the submitted information should not be released. Therefore, we have no basis to conclude Lawriter has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific

factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the state bar may not withhold the submitted information on the basis of any proprietary interest Lawriter may have in the information.

Next, you contend the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person 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(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the state bar's arguments under section 552.110.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." 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 (Tex. 2015). While you argue release of the submitted information would harm Fastcase and Lawriter by giving an advantage to their competitors, such an interest in protecting the information belongs to the third parties and not the state bar. Consequently, we find the state bar may not withhold the submitted information under section 552.104(a) of the Government Code on this basis. However, we note a private third party may also invoke this exception. *Boeing*, 466 S.W.3d at 839. Fastcase states it has competitors. Additionally, Fastcase argues its competitors could gain an advantage over it by using the information at issue "to underbid Fastcase for similar contracts, to gain competitive insight into Fastcase's business operations, and parse Fastcase's member benefit business model with the [s]tate [b]ar." After review of the information at issue and consideration of the arguments, we find Fastcase has established the release of its information at issue would give advantage to a competitor or bidder. Thus, we conclude the state bar may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup>

We note some of the remaining information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 of the Government Code provides, "Notwithstanding any other

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<sup>1</sup>As our ruling is dispositive, we need not address Fastcase's remaining argument against disclosure of its information.

<sup>2</sup>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).

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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the state bar must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the state bar may withhold the information we have marked under section 552.104(a) of the Government Code. Additionally, the state bar must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 622376

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)