



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2012

Mr. Mark A. Hallowell, Sr.
V.P. Procurement
Corpus Christi Housing Authority
3107 Ayers Street
Corpus Christi, Texas 78415

OR2012-12896

Dear Mr. Hallowell:

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# 462155.

The Corpus Christi Housing Authority (the "authority") received a request for the evaluation matrices, summary matrix, and bid tabulations with pricing matrices pertaining to a specified request for proposal. We understand that the authority takes no position with respect to the requested information, but you believe it may implicate the interests of third parties. Accordingly, you state the authority notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). You do not inform us which third parties you notified, however, we received comments from DRC Emergency Services, LLC ("DRC"). We have reviewed the submitted arguments and the submitted information.

Initially, we must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the

information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state the authority received the request for information in a letter dated May 31, 2012. Because you do not inform this office the authority was closed for business any days between May 31 and June 21, 2012, we find the authority's fifteen-business-day deadline was June 21, 2012. However, you did not submit a copy of the requested information to this office until August 7, 2012. Consequently, we find the authority failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has received comments from only DRC explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate the interests of any of the remaining third parties. *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, we conclude that the authority may not withhold any of the submitted information on the basis of any interest the remaining third parties may have in the information.

We understand DRC to raise section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial 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(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

DRC asserts its pricing information, site locations, quantities, crew sizes, personnel information, and equipment specifications are commercial or financial information, release of which would cause substantial competitive harm to DRC. Upon review of DRC’s arguments under section 552.110(b), we conclude DRC has established the release of its pricing information, which we have marked, would cause it substantial competitive injury. Accordingly, the authority must withhold the information we have marked under section 552.110(b). However, we find that DRC has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of its remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, and qualifications and experience). We therefore conclude that the authority may not withhold any of the remaining information under section 552.110(b) of the Government Code. As no further exceptions have been raised, the authority 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 http://www.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 462155

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**

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