



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 24, 2015

Ms. Valecia R. Tizeno  
City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2015-12534

Dear Ms. Tizeno:

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# 568215.

The City of Port Arthur (the "city") received a request for score sheets, evaluator notes, materials related to the proposal evaluations, and the submitted proposals for all but one named vendor for a specified request for qualifications. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified BKD, LLP ("BKD"), Moss, Levy & Hartzheim, LLP ("Moss"), Sandersen Knox & Co., LLP ("Sandersen"), Davis Kinard & Co., PC ("Davis"), Belt Harris Pechacek, LLP ("Belt"), Whitley Penn, LLP ("Whitley"), and Charles E. Reed & Associates, PC ("Charles") of the request and of their right to submit arguments to this office explaining 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); *see also* 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). We have received arguments from BKD and Moss. Thus, we have considered their 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 information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this

letter, we have not received arguments from Sandersen, Davis, Belt, Whitley, or Charles. Thus, these third parties have failed to demonstrate they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 city may not withhold the submitted information on the basis of any proprietary interest any of these third parties may have in the information.

BKD and Moss claim portions of their submitted information are excepted from disclosure under section 552.110(b) of the Government Code.<sup>1</sup> 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.*; *see also* ORD 661 at 5.

BKD and Moss claim portions of the submitted information constitute commercial or financial information that, if released, would cause them substantial competitive harm. Upon review, we find BKD has demonstrated its customer information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Thus, to the extent BKD’s customer information is not publicly available on its website, the city must withhold the information we have marked under section 552.110(b) of the Government Code. We also find Moss has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause substantive injury. Accordingly, the city must withhold the pricing information we have marked under section 552.110(b). However, Moss has failed to demonstrate the release of any of its remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, none of Moss’s remaining information at issue may be withheld under section 552.110(b). The remaining submitted 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.

---

<sup>1</sup>We understand Moss to raise section 552.110 based on the substance of its arguments.

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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 568215

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Craig Hartzheim  
Moss, Levy & Hartzheim  
5800 Hannum, Suite E  
Culver City, California 90230  
(w/enclosure)

Mr. Robert Belt  
Belt, Harris & Pechacek, L.L.P.  
3210 Bingle Road, Suite 300  
Houston, Texas 77055  
(w/enclosure)

Mr. Alan K. Sandersen  
Sandersen Knox & Co., L.L.P.  
130 Industrial Boulevard, Suite  
130  
Sugar Land, Texas 77478  
(w/enclosure)

Mr. Christopher Breaux  
Whitley Penn, L.L.P.  
3411 Richmond Avenue, Suite 500  
Houston, Texas 77046  
(w/enclosure)

Ms. L. Diane Terrell  
Davis Kinard & Co., P.C.  
400 Pine Street, Suite 600  
Abilene, Texas 79601  
(w/enclosure)

Mr. Charles E. Reed  
Charles E. Reed & Associates,  
P.C.  
3636 Professional Drive  
Port Arthur, Texas 77642  
(w/enclosure)

Mr. Timothy K. McNamara  
For BKD, L.L.P.  
Lathrop & Gage L.L.P.  
2345 Grand Boulevard, Suite 2200  
Kansas City, Missouri 64108-2618  
(w/enclosure)