



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2015

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2015-14979

Dear Ms. McGowan:

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# 572680 (ORR# 14082).

The Dallas Independent School District (the "district") received a request for the bid responses received from four named companies and the bid scoring matrix pertaining to a specified request for proposals. Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of LEMCO Construction Services, L.P. ("LEMCO"); Move Solutions, Ltd. ("Move Solutions"); Skye Building Services, LLC ("Skye"); and Texas Moving Co., Inc. ("Texas Moving"). Accordingly, you state, and provide documentation showing, the district notified these parties 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from LEMCO and Texas Moving. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted the requested bid scoring matrix for our review. To the extent any information responsive to this portion of the request existed when the district received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.006, .301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, 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) of the Government Code 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 Move Solutions or Skye explaining why the submitted information should not be released. Therefore, we have no basis to conclude Move Solutions and Skye have protected proprietary interests 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 district may not withhold the submitted information on the basis of any proprietary interests Move Solutions or Skye may have in the information.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264 (Tex. June 19, 2015). 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." *Id.* at *9. LEMCO states it has competitors. In addition, LEMCO states it "spends a considerable amount of time and resources to develop its proposals, and competitors would receive an advantage if [it] is required to disclose its methodology and resources, equipment list, staffing rate information[,] and [certain] subcontractor utilization." LEMCO also asserts if "competitors are given the information included in [its] proposal submission, [its] competitors will be able to design their proposals specifically to defeat LEMCO's proposal." After review of the information at issue and consideration of the arguments, we find LEMCO has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold LEMCO's submitted information under section 552.104(a) of the Government Code.¹

Texas Moving claims its submitted information is excepted under section 552.110(b) of the Government Code, which 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[.]"² 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

¹As our ruling is dispositive, we need not address LEMCO's remaining arguments against disclosure.

²Although Texas Moving does not cite to section 552.110(b), we understand it raise this exception based on the substance of its arguments.

injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Texas Moving claims its information constitutes commercial or financial information that, if released, would cause it substantial competitive harm. Upon review, we find Texas Moving has failed to demonstrate release of the information at issue would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Consequently, the district may not withhold any of Texas Moving's submitted information under section 552.110(b) of the Government Code.

We note some of the remaining information is protected by section 552.101 of the Government Code in conjunction with common-law privacy and by section 552.136 of the Government Code.³ Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 demonstrated. *See id.* at 681 -82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states, "[n]otwithstanding any other provision of this chapter, 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 § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the district may withhold LEMCO's submitted information under section 552.104(a) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the insurance policy numbers we have marked under section 552.136 of the Government Code. The district 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.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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 572680

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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