



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2015

Ms. Elisabeth Gazda Kaylor
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2015-19034

Dear Ms. Kaylor:

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# 579028 (city ID# W022199-062315).

The City of Arlington (the "city") received a request for all information related to the city's request for qualifications for consulting services to the city's retirement committee, including all proposals and documentation of the decision-making process to select a winning proposal. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Buck Consultants; The Bogdahn Group; The Hymas Group; The Retirement Store; Heintzberger Payne Advisors; and UBS Financial Services. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

Initially, we note you have only submitted a representative sample of information responsive to a request for proposal. You have not submitted any other information responsive to the request. Although you state the city has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information

to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the city withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent other information responsive to the request exists and was maintained by the city on the date it received the request, we assume the city has released it to the requestor. If the city has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties has 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 city may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the information.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must release the submitted information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 579028

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Donald R. Eibsen
Buck Consultants, a Xerox Co.
1200 17th Street, Suite 1200
Denver, Colorado 80202
(w/o enclosures)

Mr. Jack Evatt
The Bogdahn Group
4901 Vineland Road, Suite 600
Orlando, Florida 32811
(w/o enclosures)

Mr. Vincent Galindo
The Hyas Group
108 NW 9th Avenue, Suite 203
Portland, Oregon 97209
(w/o enclosures)

Mr. Al DiCristofaro
The Retirement Store
10305 Yucca Drive
Austin, Texas 78759
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Ms. Corrie Olivia
Heintzberger Payne Advisors
12550 SW 68th Avenue
Portland, Oregon 97223
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Mr. John P. Willhite
UBS Financial Services
10001 Woodloch Forest Drive, Suite 100
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