



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Ms. Lola Dada-Olley
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-17709

Dear Ms. Dada-Olley:

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# 621709 (Plano File No. 16-017).

The City of Plano (the "city") received a request for (1) the most current contract, addendum, and production agreement pertaining to the printing and mailing of utility bills held by a named entity for the city and (2) the latest invoice paid by the city to the named entity. You indicate you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You state release of this information may implicate the proprietary interests of DataProse, L.L.C. ("DataProse"). Accordingly, you state, and provide documentation showing, you notified DataProse of the request for information and of its right 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 received arguments from DataProse. We have considered the submitted arguments and reviewed the submitted information.

You argue portions of the submitted proposal are excepted from disclosure under section 552.110 of the Government Code. We note, however, section 552.110 is designed to protect the interests of third parties not the interests of a governmental body. *See Gov't*

Code § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[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”). Thus, we will not consider the city’s argument under section 552.110.

Next, we note DataProse seeks to withhold information not submitted to this office by the city. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the city, this ruling does not address this information and is limited to the information submitted as responsive by the city.

DataProse asserts the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, the court concluded a private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 466 S.W.3d 831 (Tex. 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 841. DataProse states it has competitors, which includes the requestor. In addition, DataProse states the information at issue, if released, would give competitors an advantage in submitting a competitive bid to the city. After review of the information at issue and consideration of the arguments, we find DataProse has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.¹

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

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive style with a large initial 'A' and 'C'.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 621709

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)