



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2017

Mr. David V. Bryce
Office of General Counsel
Houston Housing Authority
2640 Fountain View Drive
Houston, Texas 77057

OR2017-03715

Dear Mr. Bryce:

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# 649398.

The Houston Housing Authority (the "HHA") received a request for information pertaining to a specified request for proposals. The HHA states it has released some of the requested information. The HHA does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the HHA states, and provides documentation showing, it notified NRA Group, L.L.C. d/b/a National Recovery Agency ("NRA Group") and National Credit Systems, Inc. ("NCS") of the HHA's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 comments from NRA Group objecting to the release of its information under sections 552.104 and 552.110 Government Code. We have considered the claimed exceptions 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 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, NCS has not submitted to this office any reasons explaining why the requested information should not be released. Accordingly, we

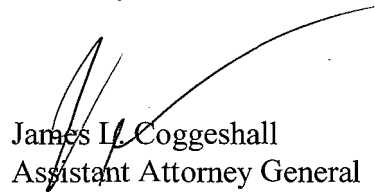
have no basis for concluding the submitted information constitutes proprietary information of that third party, and the HHA may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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.

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*, 466 S.W.3d 831, 841 (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.* NRA Group states it has competitors and argues release of its information would cause it substantial competitive harm. Upon review, we find NRA Group has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the HHA may withhold NRA Group’s information under section 552.104(a) of the Government Code.¹ The HHA 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

¹As our ruling is dispositive, we do not address the remaining arguments of NRA Group to withhold this information.

Ref: ID# 649398

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)