



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2017

Ms. A. Feliz Abalos
Senior Assistant City Attorney
City Attorney's Office
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2017-04611

Dear Ms. Abalos:

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# 648396.

The City of Odessa (the "city") received a request for the proposals submitted in response to request for proposals number 16-5603-17-O. Although you take no position as to whether the requested information is excepted under the Act, you state release of the requested information may implicate the proprietary interests of Smart Energy Systems, L.L.C. ("SES") and Tyler Technologies ("Tyler"). Accordingly, you state, and provide documentation showing, you notified SES and Tyler 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.¹ *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

¹We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted argument against release of the submitted information. *See id.* §§ 552.007, .302, .352.

received comments from SES and Tyler. We have reviewed the submitted information and the submitted arguments.

We must address the city's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The city received the request for information on December 6, 2016. On February 7, 2017, the city submitted documents "related to the above referenced request." However, upon review, we find the documents the city submitted on February 7, 2017, do not consist of the requested proposals and are not responsive to the request for information. Further, as of this date, you have not submitted to this office a copy of the information requested. Accordingly, we conclude the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. As noted above, the city takes no position as to whether the requested information is excepted under the Act and has raised no exceptions to disclosure of the information. Further, although SES and Tyler have submitted comments to this office seeking to withhold the requested information, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

A handwritten signature in cursive script that reads "Claire Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 648396

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)