



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2017

Mr. Lee Shapleigh
Assistant County Attorney
County of El Paso
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2017-09039

Dear Mr. Shapleigh:

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# 654945 (County File No. OP-17-059).

The County of El Paso (the "county") received a request for several categories of information related to a specified request for proposal. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code.¹ You also state you notified Delgado Acosta Spencer Linebarger & Perez, LLP, Gila LLC d/b/a Municipal Services Bureau, Harris & Harris, Ltd. ("Harris"), and Perdue Brandon Fielder Collins & Mott, LLP of the request for information and of their right to submit arguments to this office as to why the submitted information 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 comments from Harris. We have considered the submitted arguments.

¹Although the county raises section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See Gov't Code* 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the county's argument under section 552.110.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Delgado Acosta Spencer Linebarger & Perez, LLP, Gila LLC d/b/a Municipal Services Bureau, or Perdue Brandon Fielder Collins & Mott, LLP. Thus, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 county may not withhold any of the submitted information on the basis of any proprietary interest Delgado Acosta Spencer Linebarger & Perez, LLP, Gila LLC d/b/a Municipal Services Bureau, or Perdue Brandon Fielder Collins & Mott, LLP may have in the information.

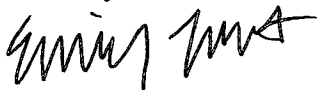
Next, we must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to subsection 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated 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. *See* Gov't Code § 552.301(e). The county states it received the request for information on February 1, 2017. Accordingly, the fifteen-business-day deadline was February 22, 2017. As of the date of this letter, we have not received arguments from the county explaining why the claimed exceptions apply or a copy of the information requested. Consequently, we find the county failed to comply with section 552.301(e) of the Government Code.

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 unless there is a compelling reason to withhold the information from disclosure. *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). Although the county and Harris raise exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information 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 black ink, appearing to read "Emily Kunst".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 654945

c: Requestor

4 Third Parties