



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2017

Ms. Mayra Gonzales
City Secretary
City of Galena Park
P.O. Box 46
Galena Park, Texas 77547

OR2017-10279

Dear Ms. Gonzales:

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# 657842.

The City of Galena Park (the "city") received two requests for information concerning a specified building. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you indicate the submitted information may contain proprietary information excepted from disclosure under the Act. Accordingly, you state you notified Garner Environmental Services, Inc. ("Garner"), the interested third party, of the request and of the company's 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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received and considered comments forwarded by the city from an attorney representing Garner and reviewed the submitted information.

Although you state, and provide documentation demonstrating, Garner objects to the release of its submitted information, we note Garner has not raised any specific exceptions to disclosure or otherwise explained why its information should not be released. *See* Gov't Code § 552.305(b) (interested party may submit reasons why information pertaining tot hat party should be withheld). Accordingly, we have no basis for finding Garner has a protected

proprietary interest 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 the requested information would cause that party substantial harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Thus the city may not withhold any portion of the submitted information on that basis.

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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). While you argue the release of the submitted information could harm Garner by giving an advantage to its competitors, such an interest in protecting the information belongs to Garner and not the city. Therefore, we find the city may not withhold the submitted information under section 552.104(a) of the Government Code.

Section 552.139(b)(3) of the Government Code provides, “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential.¹ Gov’t Code § 552.139(b)(3). We note the submitted information includes photocopies of identification cards of the Texas Department of State Health Services (“DSHS”). However, we are unable to determine if the identification cards in the photocopies were issued to an official or employee of DSHS. Thus, we must rule conditionally. Therefore, to the extent the identification cards were issued to an official or employee of DSHS, the city must withhold the information we marked under section 552.139(b)(3) of the Government Code. Conversely, to the extent the identification cards were not issued to an official or employee of DSHS, the city may not withhold it on that basis.

In summary, to the extent the identification cards were issued to an official or employee of DSHS, the city must withhold the information we marked under section 552.139(b)(3) of the Government Code. The remaining information must be released.

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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 657842

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)