



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Michelle Freeland  
Legal Assistant  
Texas Department of Public Safety  
P. O. Box 4087  
Austin, Texas 78773-0001

OR2017-11400

Dear Ms. Freeland:

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# 659162 (PIR # 17-1632).

The Texas Department of Public Safety (the "department") received a request for three specified bid tabulations. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We understand the release of this information may implicate the proprietary interests of the following third parties: Real Clean Janitorial ("Real Clean"); DNC Cleaning, Inc. ("DNC"); James Enterprises ("James"); The Organized Maintenance Services Inc. ("Organized Maintenance"); and WCD Enterprises LLC ("WCD"). Accordingly, you provide documentation showing you notified the interested third parties of the request for information and of their rights 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 comments from WCD. We have considered the submitted argument and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to

section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code. § 552.301(b). The department received the request for information on January 23, 2017. Accordingly, the ten-business-day deadline for requesting a ruling from this office was February 6, 2017. The information required by section 552.301(b) was hand-delivered to this office on March 21, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301 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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You seek to withhold the submitted information under section 552.104 of the Government Code. However, we find you have failed to establish a compelling reason to address your argument under this exception. Nevertheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted third-party argument against disclosure of the information at issue.

Next, we note 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Real Clean, DNC, James, or Organized Maintenance explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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 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 department may not withhold any portion of the submitted information on the basis of any proprietary interest these third parties may have in the information.

WCD argues a portion of its information is subject to section 552.110(b) of the Government Code. Section 552.110(b) protects “[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[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would

likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5. WCD argues its pricing information consists of commercial information the release of which would cause WCD substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we conclude WCD has established the release of its pricing information would cause the company substantial competitive injury. Accordingly, the department must withhold WCD's pricing information, which we marked, under section 552.110(b) of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the department must withhold WCD's pricing information, which we marked, under section 552.110(b) of the Government Code. The department must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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](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,



Jahanna Ward  
Assistant Attorney General  
Open Records Division

JW/eb

Ref: ID# 659162

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)