



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Mr. Whitt L. Wyatt
Counsel for the City of Colleyville
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2017-12500

Dear Mr. Wyatt:

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# 660961 (ORR# 84889).

The City of Colleyville (the "city"), which you represent, received a request for the winning quote related to a specified request for proposals (the "RFP"). The city claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The city also states, and provides documentation showing, it notified Ricoh USA, Inc. ("Ricoh"), an interested third party, of the city's receipt of the request for information and of Ricoh's 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 considered the claimed exception 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, Ricoh 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 city 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, 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.


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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, the court concluded 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.* The city informs us the RFP at issue resulted in a contract. Nevertheless, the city asserts the submitted information is excepted from disclosure under section 552.104 because, if it releases the information at issue and, as a result, “the contract becomes terminated between the [c]ity and the bidder, the [c]ity would have to formally republish the RFP to seek additional bidders” and “[d]isclosure of the proposals at this time would give an advantage to competitors or other bidders and negatively impact negotiations.” After review of the information at issue and consideration of the city’s arguments, we find the city has failed to establish the release of the information at issue would give advantage to a competitor or bidder. Thus, the city may not withhold the submitted information under section 552.104(a) of the Government Code.

We note some of the materials at issue 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. Thus, the city must release the submitted information, but may only release any copyrighted information 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, 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

Ref: ID#660961

Enc. Submitted documents

c: Requestor
(w/o enclosures)