



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2017

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-12939

Dear Ms. Cortez:

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# 661725 (ORR Nos. W046291-032817 & W047054-050417).

The City of El Paso (the "city") received two requests pertaining to Solicitation No. 2017-941. Both requests seek the award winner and the equipment specified by the award winner. The first request also seeks the pricing, scope of work, and criteria used to award the bid. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Qannex Corporation ("Qannex"). Accordingly, you state, and provide documentation showing, you notified Qannex of the request for information and of its right 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 reviewed the submitted information.

Initially, we note the city has not submitted information responsive to the criteria used to award the bid. We assume, to the extent any information responsive to this portion of the request existed on the date the city received the request, the city has released it. If the city has not released any such information, it must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also* Open Records Decision No. 664 (2000) (if

governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note both requestors only seek information related to the award winner of the specified solicitation. Accordingly, the proposal you have submitted that was not selected is not responsive to the present requests. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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 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 Qannex explaining why the submitted information should not be released. Therefore, we have no basis to conclude Qannex 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 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 city may not withhold the submitted information on the basis of any proprietary interest Qannex may have in the information.

We note the remaining information contains information subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, we find the city must withhold the insurance policy numbers in the responsive information under section 552.136 of the Government Code.

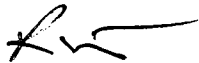
In summary, the city must withhold the insurance policy numbers in the responsive information under section 552.136 of the Government Code. The city must release the remaining responsive information.

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. *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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 661725

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

1 Third Party
(w/o enclosures)