



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2017

Ms. Caroline Cho
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-13183

Dear Ms. Cho:

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# 662054 (Ref. No. W162011-032317).

The City of San Antonio (the "city") received two requests from different requestors for information pertaining to a specified request for proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of aMAEzing Marketing Group, LLC ("aMAEzing"); Anderson Advertising, Inc. ("Anderson"); BethanyEast PR & Mgmt. Consulting; Chamoy Creative, Click Spigot Marketing, LLC; Concept Incarnate, LLC; Creative Civilization; GoCard, LLC; and KGB Texas Marketing/Public Relations, Inc. ("KGB"). Accordingly, you state, and provide documentation showing, you notified these third parties 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

¹We note the first requestor modified her request. *See Gov't Code* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

explain applicability of exception in the Act in certain circumstances). We have received comments from aMAEzing and KGB. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state Anderson's proposal is not responsive to the present requests. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

Next, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-17881 (2016). In that ruling, we determined 1) to the extent the customer information of Creative Noggin, LLC ("Creative Noggin"), is not publicly available on the company's website, the city must withhold Creative Noggin's customer information under section 552.110(a) of the Government Code; 2) the city must withhold the marked insurance policy numbers under section 552.136 of the Government Code; and 3) the city must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the city must continue to rely on Open Records Letter No. 2016-17881 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 only received comments from aMAEzing and KGB. Thus, we have no basis to conclude any of the remaining third parties has 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 city may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (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.* at 841. KGB and aMAEzing each state it has competitors. In addition, KGB states release of its information would allow competitors an unfair advantage by knowing KGB’s pricing and other information. Also, aMAEzing states release of its information at issue would allow competitors to outbid them in future situations. After review of the information at issue and consideration of the arguments, we find KGB and aMAEzing have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold KGB’s information and the information we have indicated under section 552.104(a) of the Government Code.²

Section 552.136 of the Government Code states “[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.”³ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the city must withhold the insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. 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 city must continue to rely on Open Records Letter No. 2016-17881 as a previous determination and withhold or release the information at issue in accordance with that ruling. The city may withhold KGB’s information and the information we have indicated under section 552.104(a) of the Government Code. The city must withhold the insurance policy numbers in the remaining responsive information under section 552.136 of the Government Code. The city must release the remaining responsive information; however, any information protected by copyright may only be released in accordance with copyright law.

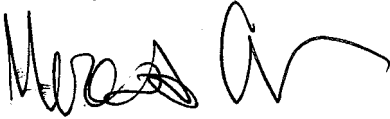
²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

³The 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 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 'Meredith L. Coffman', with a stylized flourish at the end.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 662054

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

8 Third Parties
(w/o enclosures)