



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Ms. Candice M. Gambrell
Senior Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-16659

Dear Ms. Gambrell:

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# 667670 (GC No. 24307).

The City of Houston (the "city") received a request for the bid tabulation of a specified city service contract. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Clifford Power Systems ("Clifford"), Kentech, Inc. ("Kentech"), Total Energy Solutions ("Total Energy"), Mnl Diesel, LLC ("Mnl"), Power Field Services ("Power Field"), and Waukesha-Pearce Industries ("Waukesha-Pearce"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their rights to submit arguments to this office. *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 Mnl. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted arguments and the submitted information.

Initially, we note, and you acknowledge, city did not comply with its ten- and fifteen-business-day deadlines under section 552.301(b) and 552.301(e) of the Government Code in requesting a decision from this office regarding the instant request. *See id.* § 552.301(b),

(e). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the interests of third parties are at stake, we will consider the arguments against disclosure of 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 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 Clifford, Kentech, Total Energy, Power Field, or Waukesha-Pearce explaining why the information at issue should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the information at issue. *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 information at issue on the basis of any proprietary interest Clifford, Kentech, Total Energy, Power Field, or Waukesha-Pearce may have in the information.

MnI seeks to withhold some of its information under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). 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[.]" *Id.* § 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.

MnI asserts portions of its proposal are excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we find MnI has established its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive injury to MnI. Therefore, the city must withhold the information we marked

under section 552.110(b) of the Government Code.¹ The city must release the remaining 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.

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 667670

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.