



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2017

Mr. Michael Shaunessy
Counsel for the City of Hutto
McGinnis Lochridge, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2017-18827

Dear Mr. Shaunessy:

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# 672850.

The City of Hutto (the "city"), which you represent, received a request for a specified contract. You claim the submitted information is excepted from disclosure under sections 552.104, 552.136, and 552.137 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Al Clawson Disposal, Inc. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its 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 explain applicability of exception in the Act in certain circumstances). We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure.

See id. § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third party 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 the third party 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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You argue release of the submitted information would harm the third party by giving an advantage to their competitors by allowing competitors to undercut pricing. We note such an interest in protecting the information belongs to the third party and not the city. Upon review, we find you have failed to demonstrate release of the submitted information would give advantage to a competitor or bidder. The city may not withhold any of the submitted information under section 552.104 of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding 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.” 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. Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code. However, none of the remaining information is confidential under section 552.136 and the city may not withhold it on those grounds.

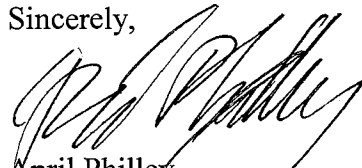
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are of a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city may not withhold the e-mail addresses it marked under section 552.137 of the Government Code.

In summary, the city must withhold the information we marked under section 552.136 of the Government Code. 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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 672850

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)