



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2017

Mr. Braden W. Metcalf
Counsel for the Ellis Appraisal District
Nichols, Jackson, Dillard, Hager & Smith L.L.P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2017-21791

Dear Mr. Metcalf:

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# 676865 (TM# 88144).

The Ellis County Appraisal District (the "district"), which you represent, received a request for geographic information systems ("GIS") shapefile data pertaining to buildings within the city of Waxahachie. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. In addition, you state release of the submitted information may implicate the proprietary interests of Pictometry International Corp. ("Pictometry"). Accordingly, you state, and provide documentation showing, you notified Pictometry 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 received comments from Pictometry. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of GIS shapefile data requested by the requestor. This ruling does not address the public availability of the non-responsive information, and the district need not release it in response to this request.

Next, the Pictometry contends the district is not required to release the requested information because this information is commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Pictometry states the submitted information is available to the requestor by online purchase. Upon review, however, we find Pictometry has failed to demonstrate the information at issue came from the type of commercial book or publication purchased or acquired by a governmental body for research purposes as contemplated by section 552.027. *See id.* § 552.027(a). Therefore, the information at issue is not subject to section 552.027, and must be released unless it falls within an exception to disclosure. *Id.* §§ 552.006, .021, .301, .302.

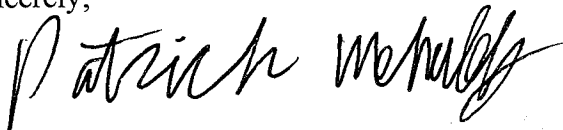
Next, we address Pictometry's assertion under section 552.104 of the Government Code. Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *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. Pictometry states it has competitors. In addition, Pictometry states release of the information would allow its competitors to use "Pictometry's proprietary information without incurring the costs of development" which would allow competitors to

undercut Pictometry in their final bid prices. After review of the information at issue and consideration of the arguments, we find Pictometry has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude district may withhold the submitted information under section 552.104(a) of the Government Code.²

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# 676865

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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