



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2017

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

OR2017-25484

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# 683241 (COEP ORR Ref. No. W048955-082917).

The City of El Paso (the "city") received a request for information pertaining to a specified solicitation. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of this information may implicate the proprietary interests of Bondtech Corporation ("Bondtech").¹ Accordingly, the city states, and provides documentation showing, it notified Bondtech 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 some of the submitted information, which we have indicated, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-11749 (2017). In that ruling, we determined the city must (1) withhold some information under section 552.136 of the Government Code and (2) release the remaining information. We have no indication there has been any change in the law,

¹Although the city also raises section 552.101 for the submitted information, the city provides no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume the city no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

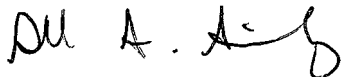
facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city must rely on Open Records Letter No. 2017-11749 as a previous determination and withhold or release the information we have indicated in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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) of the Government Code 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 Bondtech explaining why the remaining information should not be released. Therefore, we have no basis to conclude Bondtech has a protected proprietary interest in the remaining information, and the city may not withhold any portion of it on that basis. *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 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 683241

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)