



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2017

Ms. Mary Kay Fischer
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2017-27279

Dear Ms. Fischer:

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# 686084 (Ref. No: W008057-091117).

The City of Friendswood (the "city") received a request for information pertaining to two specified bids. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of Groundstar, Inc. ("Groundstar"). Accordingly, you state, and provide documentation showing, you notified Groundstar of the request and its right 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 considered the exception you claim and reviewed the submitted information.

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 not received comments from Groundstar. Thus, we have no basis to conclude Groundstar 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 Groundstar 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.” *Id.* at 841. You argue release of the submitted information would harm the third party at issue by giving an advantage to its competitors. However, such an interest in protecting the information belongs to the third party and not the city. Accordingly, the city may not withhold the submitted information under section 552.104(a) of the Government Code.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 686084

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)