



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 9, 2018

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2018-00606

Dear Ms. Sheely:

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# 690638.

The Travis County Attorney's Office, the Travis County Judge's Office, and the Travis County Purchasing Office (collectively, the "county") each received a request from the same requestor for seven categories of information pertaining to a specified request for proposals and a specified PIA request.¹ The county states it has released or will release some information to the requestor. We understand the county will withhold access device numbers pursuant to section 552.136(c) of the Government Code.² Although the county takes no position as to whether the submitted information is excepted under the Act, the county states

¹The county states, and provides documentation showing, it sent the requestor estimates of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The county informs us the requestor modified the request in response to the cost estimates. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

²Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

release of the submitted information may implicate the proprietary interests of AECOM; Alvarez and Marsal; CBRE; and Lincoln Property Company (“Lincoln”).³ Accordingly, the county states, and provides documentation showing, it notified each 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 received comments from Lincoln. We have reviewed the submitted information and the submitted arguments.

Initially, we note Lincoln argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the county has submitted to us for our review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the county submitted as responsive to the request for information.

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) 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the county 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.

Lincoln asserts portions of the submitted information are protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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]

³We note the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(e). Nonetheless, as third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Lincoln states it has competitors. In addition, Lincoln states release of the information it indicated “could be used by a competing property company to outbid [Lincoln] or gain a competitive advantage[.]” After review of the information at issue and consideration of the arguments, we find Lincoln has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information Lincoln indicated under section 552.104(a) of the Government Code.⁴

Lincoln claims section 552.137 of the Government Code for certain e-mail addresses. 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). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137 does not apply to an e-mail address “contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]” *See id.* § 552.137(c)(3). One of the e-mail addresses Lincoln seeks to withhold is subject to section 552.137(c)(3). Therefore, the county may not withhold this e-mail address, which we have marked for release, under section 552.137 of the Government Code. *See id.* § 552.137(a). However, upon review, the county must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the county may withhold the information Lincoln indicated under section 552.104(a) of the Government Code. The county must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The county must release the remaining information.

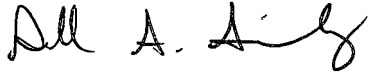
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴As our ruling is dispositive, we need not address Lincoln’s remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 690638

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)