



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2018

Mr. Corey Sainz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2018-01510

Dear Mr. Sainz:

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# 692684 (Case Nos. 17-1020-1163, 17-1007-2098, 17-1019-197).

The City of El Paso (the "city") received three separate requests from different requestors for specified correspondence and e-mails pertaining to a bid for the headquarters of Amazon. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Borderplex Alliance ("Borderplex"). Accordingly, you state, and provide documentation showing, you notified Borderplex of the requests 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 considered the submitted arguments and reviewed the submitted representative sample of information.¹

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Borderplex explaining why the submitted information should not be released. Therefore, we have no basis to conclude Borderplex has protected proprietary interests 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 Borderplex may have in the information.

Section 552.104(a) of the Government Code exempts 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 assert the city has specific marketplace interests in the information at issue because it "is competing against other entities to attract and encourage community and business growth from Amazon." You assert release of the information you marked would give advantage to competitors of the city. After review of the information at issue and consideration of the arguments, we find you have established the release of the information you marked would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information you marked under section 552.104(a) of the Government Code.² 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.

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.

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

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 692684

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)