



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

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

OR2019-00214

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# 744606 (Doc. ID #638840-1).

The Travis County Purchasing Office (the "county") received a request for 14 categories of information pertaining to a specified lease. You inform us the county will release most of the responsive information to the requestor. The county does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the county states, and provides documentation showing, it notified Brandywine Realty Trust ("Brandywine"); Cielo Property Group, Inc. ("Cielo"); Cousins Properties Inc. ("Cousins"); Endeavor Real Estate Group ("Endeavor"); Lincoln Property Company ("Lincoln"); Presidium Group, LLC ("Presidium"); Riverside Resources ("Riverside"); Southwest Strategies Group ("SWSG"); and The Hanover Company ("Hanover") of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Endeavor, Presidium, and SWSG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2018-00606

(2018). In that ruling, we determined the county may withhold certain information pursuant to section 552.104(a) of the Government Code, must withhold some information pursuant to section 552.117 of the Government Code, and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the county may continue to rely on Open Records Letter No. 2018-00606 as a previous determination and release or withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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 information is or is not excepted from disclosure). However, we will address the third parties' arguments against disclosure for information not previously ruled upon.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Cielo, Cousins, Hanover, Brandywine, Riverside, or Lincoln explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest 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 county may not withhold the submitted information on the basis of any proprietary interest Brandywine, Cielo, Cousins, Hanover, Lincoln, or Riverside may have in the information.

We note SWSG 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.

Although Endeavor objects to the release of some of its submitted information, we note Endeavor has not raised any specific exceptions to disclosure or otherwise adequately explained why its information should not be released. *See* Gov't Code § 552.305(b) (interested party may submit reasons why information pertaining to that party should be withheld). Accordingly, we have no basis for finding Endeavor has a protected proprietary interest in any of 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 county may not withhold any of the submitted information on the basis of any proprietary interest Endeavor may have in the information.

Presidium and SWSG assert portions of their information are excepted from disclosure 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] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Presidium and SWSG state they have competitors. Presidium also states “the ownership, equity, debt financing, and unusual information [in portions of its submitted information] . . . would give an advantage to Presidium’s competitors” if released. Additionally, Presidium states release of its specific financial information about its investments or financial models it uses for development projects would put the company at a competitive disadvantage. SWSG states its information at issue “contains sensitive information that would . . . allow competitors to target [SWSG’s] clients and ‘undercut’ SWSG” and that “competitors will . . . use [this] information against SWSG on future projects, to target SWSG clients, and to [unfairly] improve [the competitor’s] negotiating position. Further, SWSG states release of its financial information would diminish its competitive advantage. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Presidium and SWSG have established the release of each of their submitted information

would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we marked under section 552.104(a) of the Government Code.¹

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county may continue to rely on Open Records Letter No. 2018-00606 as a previous determination and withhold or release the identical information in accordance with that ruling. The county may withhold Presidium's and SWSG's information, which we marked, under section 552.104(a) of the Government Code. The county must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Lecelle Clarke
Attorney
Open Records Division

LC/eb

¹As our ruling is dispositive, we need not address Presidium's or SWSG's remaining arguments against disclosure of this information.

Ref: ID# 744606

Enc. Submitted documents

c: Requestor
(w/o enclosures)

9 Third parties
(w/o enclosures)