



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2019

Ms. Sherry Phelps Vital
Assistant City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR2019-01594

Dear Ms. Vital:

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# 746623.

The City of Port Arthur (the "city") received a request for information pertaining to a specified request for proposals. You state the city has released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Metric Engineering, Inc. ("Metric"); Stuart Consulting Group, Inc.; Thompson Consulting Services, LLC; and True North Emergency Management, LLC ("True North").¹ Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 Metric and True North. We have considered the submitted arguments and reviewed the submitted information.

¹We note the city did not comply with the requirements of section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note the requestor seeks only a copy of the winning proposal, scoring information, and the pricing information submitted by bidders for a specified request for proposals. The city has submitted documents that contain information beyond the requested information. Thus, the portions of the submitted documents that contain information beyond the requested information are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release such information in response to this request.

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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these third parties has 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 city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

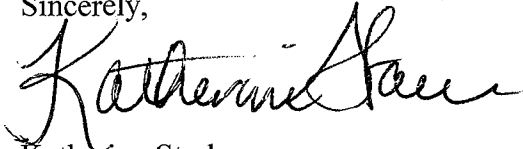
Metric and Truth North raise section 552.104 of the Government Code for their information. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. 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. Metric and Truth North each state they have competitors. In addition, Metric and Truth North assert release of the information at issue would cause harm to the companies' interests and provide advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Metric and Truth North have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Metric's and Truth North's information under section 552.104(a) of the Government Code.² As no further exceptions to disclosure are raised, the city must release the remaining responsive 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.

²As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.

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,

A handwritten signature in black ink, appearing to read "Katherine Stark". The signature is written in a cursive, flowing style.

Katherine Stark
Attorney
Open Records Division

KS/gw

Ref: ID# 746623

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 4 Third Parties
(w/o enclosures)