



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2019

Ms. Clarissa Orona
Office Assistant II
City of Dallas
1500 Marilla Street, 3FN
Dallas, Texas 75201

OR2019-02596

Dear Ms. Orona:

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# 748010 (Ref. No. C010042-110218).

The City of Dallas (the "city") received a request for the winning bids pertaining to a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Argent Associates; Deen Kubota; Four Brothers Ford Tractors, LLC; Kut Kwick, Corp.; Landmark Equipment, Inc.; Lone Star Mower Repair; Longhorn, Inc.; Luber Bros, Inc.; Montage Enterprises, Inc.; Pioneer Manufacturing Company; Professional Turf Products, LP; Richardson Saw and Lawn Mower Company, Inc.; Tom Loftus, Inc., d/b/a Austin Turf & Tractor ("Austin Turf"); and Zimmerer Kubota & Equipment, Inc. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request and their 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 received comments from Austin Turf. We have considered the submitted arguments 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 any of the remaining interested third parties. Thus, we have no basis to conclude any of the remaining interested third parties 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 any of the remaining interested third parties 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). 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. Austin Turf states it has competitors. In addition, Austin Turf states releasing a portion of its information would give competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find Austin Turf has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Austin Turf’s pricing information under section 552.104(a) of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the bank routing, bank account, and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

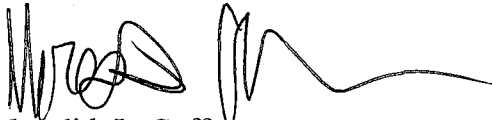
In summary, the city may withhold Austin Turf’s pricing information under section 552.104(a) of the Government Code. The city must withhold the bank routing, bank account, and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 748010

Enc. Submitted documents

c: Requestor
(w/o enclosures)