



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Mr. Byron L. Brown  
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OR2019-03889

Dear Mr. Brown:

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# 750033.

The City of Fulshear (the "city"), which you represent, received two requests from the same requestor for information pertaining to a specified request for proposals, including information regarding the procurement process.<sup>1</sup> The city states it will disclose some of the requested information to the requestor. The city claims the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, the city state release of the submitted information may implicate the proprietary interests of TIP Strategies, Inc. ("TIP"). Accordingly, the city states, and provides documentation showing, it notified the interested third party of the request for information and of its 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 considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup>The city indicates it sent the requestor a cost estimate 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).

Initially, we note the requestor asks the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume the city has made a good faith effort to do so.

Next, we address the requestor's contention that the city did not comply with the procedural requirements of the Act in response to the first request for information. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). The requestor asserts he was not timely notified of the request for a ruling for the first request for information as required by section 552.301(d) of the Government Code. The city states, and the requestor acknowledges, the city received the first request for information on November 14, 2018. The city informs us it was closed on November 22 and 23, 2018. We note this office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was November 30, 2018. The envelope in which the city submitted to this office the information required by section 552.301(b) is postmarked November 29, 2018. The request for a ruling indicates the requestor was copied on that correspondence. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the city complied with the procedural requirements mandated by subsection 552.301(d) of the Government Code. Accordingly, we will address the arguments of the city to withhold the information at issue.

Although the city contends the submitted information is excepted from disclosure under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See id.* § 552.110 (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained"). Thus, we do not address the city's argument under section 552.110 of the Government Code.

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) of the Government Code 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 TIP explaining why the information at issue should not be released. Thus, we have no basis to conclude TIP 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, 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. Therefore, the city may not withhold the submitted information on the basis of any proprietary interest TIP 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, 841 (Tex. 2015). Although the city raises section 552.104, we find the city failed to establish the release of the information at issue would give advantage to a competitor or bidder. Therefore, the city may not withhold any of the submitted information under section 552.104(a) of the Government Code. As no further exceptions to disclosure are raised, the city must release the submitted 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](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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

Ref: ID# 750033

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)