



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Ms. Elizabeth R. Hadley
Counsel for the City of Plano
Greenberg Traurig LLP
300 West 6th Street, Suite 2050
Austin, Texas 78701

OR2019-03904

Dear Ms. Hadley:

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# 750043 (Plano File No. ED18-001).

The City of Plano (the "city"), which you represent, received a request for the incentive package offered to Amazon for its second headquarters. You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Campus at Legacy West; Haggard Circle; Lavon Farms; Legacy Central; and Parker Road Station. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of 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 considered the claimed exceptions and reviewed the submitted representative sample of information.¹

¹We assume 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

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* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any interested third party explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the interested 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, 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 any interested third party 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). 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). The city indicates it has specific marketplace interests in the information at issue because the city "has a record of competing with other cities nationally for corporate relocation opportunities." In addition, the city states release of the information at issue "would cause [the city] substantial competitive harm as competing cities could undercut [the city] in current or future bids." After review of the information at issue and consideration of the arguments, we find the city has established it has specific marketplace interests. 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.

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

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 the submitted information.

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 "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/mo

Ref: ID# 750043

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)