



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2019

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy Roeder Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070-1210

OR2019-05731

Dear Mr. Pittman:

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# 753375 (ORR #G030648).

The City of Frisco (the "city"), which you represent, received a request for information related to contractors and subcontractors for any construction or maintenance work during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of ACIS; Brandt Companies; Denali Construction; EEC Enviro Service; ElstonAire, Frymire Services; ABM Building Services, L.L.C.; and Infinity Contractors. Accordingly, the city states, and provides documentation showing, it notified the third parties of the request for information and of the right 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 reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision

from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the request for information on December 5, 2018. The city informs us, and provides documentation demonstrating, on December 6, 2018, the city provided the requestor with a cost estimate for providing records in compliance with section 552.2615 of the Government Code. *See id.* § 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40). The city informs us on December 10, 2018, the requestor paid the estimated charges. Section 552.263(e) provides when a governmental body requires a deposit or bond for anticipated costs, the request for information is considered received on the date the governmental body receives the deposit or bond. *See id.* § 552.263(e). Here, the city sent a cost estimate pursuant to section 552.2615, but the city did not require a deposit or bond from the requestor pursuant to section 552.263. We note section 552.2615 provides the submission of an estimate of charges to the requestor does not affect the application of the deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing “[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G”). Thus, the city’s deadlines were not reset when the requestor paid the estimated charges. Accordingly, the request is considered received on December 5, 2018. The city does not inform us it was closed for any business days between December 5, 2018, and December 19, 2018. Accordingly, the city was required to provide the information required by section 552.301(b) by December 19, 2018. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked December 21, 2018. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city informs us the third parties may have protected proprietary interests in the submitted information. Accordingly, we will consider whether the submitted information may be withheld on behalf of the third parties. However, we find the city has failed to establish a compelling reason to address its claimed exception.

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

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. Therefore, the city must release the submitted 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 753375

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)