



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 13, 2019

Mr. Zachary Brown
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2019-06937

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# 754418 (PIR Nos. X001616 and C017191).

The City of Austin (the "city") received two requests from separate requestors for the winning proposals pertaining to a specified request for proposals, as well as information pertaining to the awarded contract. You state the city has released most of the responsive information. Although the city takes no position regarding whether the submitted responsive information is excepted from disclosure under the Act, the city states its release may implicate the proprietary interests of the following: Account Control Technology, Inc. ("ACT"); Contract Callers, Inc. ("CCI"); IC System, Inc. ("ICS"); SWC Group, L.P. ("SWC"); and Transworld Systems, Inc ("Transworld").¹ Accordingly, the city states, and provides documentation showing, it 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 received arguments from ICS. We have considered the submitted arguments and reviewed the submitted information.

¹We note, and the city acknowledges, it did not comply with the requirements of section 552.301 of the Government Code in requesting a ruling from this office with regard to the first request for information. *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, the submitted proposals pertaining to ACT, ICS, SWC, and Transworld, which were not awarded the contract at issue, are not responsive to either request for information. This ruling does not address the public availability of the non-responsive information, which we indicated, and the city need not release it in response to these requests.²

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 letter, we have not received comments from CCI explaining why its information should not be released. Thus, we have no basis to conclude CCI has a protected proprietary interest in the submitted responsive 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 responsive information on the basis of any proprietary interest CCI may have in the information. Accordingly, the city must release the submitted responsive information pertaining to CCI.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

²As we are able to make this determination, we need not address ICS's arguments against disclosure of this information.

Ref: ID# 754418

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)