



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2019

Ms. Jacque Cullom
Assistant City Attorney
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666

OR2019-08261

Dear Ms. Cullom:

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# 755638 (W004537-010419).

The City of San Marcos (the "city") received a request for information pertaining to a specified request for proposals. We understand the city will release some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Perdue Brandon Fielder Collins & Mott, LLP ("Perdue Brandon") and two additional third parties. Accordingly, you state the city notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ *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 Perdue Brandon. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Perdue Brandon seeks to withhold information that was not submitted to this office by the city. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must

¹You inform us the additional third parties do not object to the disclosure of their information.

submit copy of specific information requested). Because this information was not submitted by the city, this ruling does not address this information and is limited to the information submitted as responsive by the city.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Perdue Brandon states it has competitors. In addition, Perdue Brandon states release of the submitted information would allow its competitors to incorporate and reverse engineer its processes, which would give its competitors an advantage by allowing them to undercut Perdue Brandon in future bidding processes, as well as current bidding processes with other entities. After review of the information at issue and consideration of the arguments, we find Perdue Brandon has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

²As our ruling is dispositive, we need not address Perdue Brandon’s remaining arguments against disclosure of this information.

Ref: ID# 755638

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)