



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2019

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-08781

Dear Ms. Pate:

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# 757032 (ORR W079088).

The City of Fort Worth (the "city") received a request for information pertaining to the maintenance or construction of any city owned business during a specified time period, including current HVAC contracts.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified A&G Piping, Inc.; Carrier Enterprise, LLC; DMI Corp; Environmatic Systems of Fort Worth, Inc.; Freer Mechanical Contractors, Inc.; Johnson Controls, Inc.; L J Design & Construction LLC; Temperature Control Systems, Inc.; Tex Air Filters; and Trane US, Inc. d/b/a Trane 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. *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.

¹We note, and you acknowledge, the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the city's violation of section 552.301 in requesting this decision.

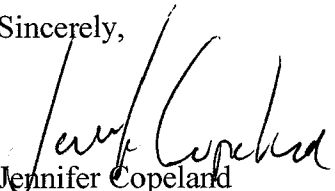
Initially, we note you only submitted information pertaining to the request for current HVAC contracts for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

We note 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 interested third parties explaining why their information should not be released. Therefore, 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, 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 any of the information at issue on the basis of any proprietary interest the interested third parties may have in it. As no exceptions have been raised, the submitted information must be released.

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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 757032

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 10 Third Parties
(w/o enclosures)