



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-10058

Dear Mr. Miles:

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# 759442 (Reference No. 17471).

The Texas Health and Human Services Commission (the "commission") received a request for two specified contracts. We understand you will redact information under section 552.147(b) of the Government Code.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 Morris & Dickson Company, LLC ("Morris").² Accordingly, you state, and provide documentation showing, you notified Morris of the request for information and of its right to submit arguments to this office as to why the information at issue 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

¹We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

²We note although you mark information under section 552.136 of the Government Code, you make no arguments to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

exception in the Act in certain circumstances). We have received arguments from Morris. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of the two specified contracts. This ruling does not address the public availability of the non-responsive information and the commission need not release it in response to this request.

Morris claims some of its information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the holding in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The holding in *National Parks* pertains to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency. The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body's ability to obtain necessary information in the future. *National Parks*, 498 F.2d 765. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. See Open Records Decision No. 661 at 5-6 (1988) (discussing enactment of section 552.110(b) of the Government Code by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, we will consider only Morris' interests in its information.

Morris claims its information is excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5-6 (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).

Morris argues its information consists of commercial or financial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. We note Morris was the winning bidder in this instance. This office considers the prices charged in government contract awards to be a matter of strong public

interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). In addition, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3); Open Records Decision No. 541 at 8 (1990). Upon review, we find Morris has not established any of its information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, none of Morris' information may be withheld under section 552.110(b) of the Government Code. As you raise no exceptions to disclosure, the commission must release the submitted 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 759442

Enc. Submitted documents

c: Requestor
(w/o enclosures)