



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2019

Ms. Myrna S. Reingold
Legal Department
Galveston County
722 Moody, 5th Floor
Galveston, Texas 77550

OR2019-11652

Dear Ms. Reingold:

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# 763171.

The Galveston County Purchasing Agent (the "county") received a request for statements of qualifications submitted by Arkitektura Development, Inc. ("Arkitektura"), in response to request for qualifications numbers B121014 and B191022. The county claims some of the submitted information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code. Additionally, the county states release of the submitted information may implicate the proprietary interests of Arkitektura. Accordingly, the county states, and provides documentation showing, it notified Arkitektura 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 received comments from Arkitektura. We have reviewed the submitted arguments and the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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. Arkitektura states it has competitors. In addition, Arkitektura states

release of some of its information would result in a competitive advantage, to Arkitektura's detriment. After review of the information at issue and consideration of the arguments, we find Arkitektura has established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we marked under section 552.104(a) of the Government Code.¹

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a). The county and Arkitektura seek to withhold e-mail addresses within the remaining information under section 552.137. However, we note the e-mail addresses at issue are excluded by subsection 552.137(c). *See id.* § 552.137(c) (Subsection (a) does not apply to an e-mail address contained in a response to a request for bids or proposals or contained in a response to similar invitations soliciting offers). Therefore, the county may not withhold any e-mail addresses within the remaining information under section 552.137 of the Government Code.

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.

In summary, the county may withhold the information we marked under section 552.104 of the Government Code. The county must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The county must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 763171

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third party
(w/o enclosures)