



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2019

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-12011

Dear Mr. Murray:

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# 763806 (PIR No. W081479).

The City of Fort Worth (the "city") received a request for the bid tabulations pertaining to four specified projects. 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 several third parties.¹ Accordingly, you state, and provide documentation showing, you 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. *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

¹The third parties at issue are as follows: Caldwell Tanks, Inc.; Moutain Cacase of Texas, LLC; Jackson Construction, LTD; Condie Construction Company ("CCC"); Landmark Structures I, LP.; Phoenix Fabricators & Erectors, LLC; Venus Construction Company; Ark Contracting Services; Circle C Construction; S.J. Louis Construction of Texas ("S.J. Louis"); PM Construction & Rehab; and Granite Construction Company.

in certain circumstances). We have received comments from CCC and S.J. Louis.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note S.J. Louis argues against release of information that the city has not submitted for our review. This ruling does not address information beyond what the city has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the request for information. *See id.*

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude the remaining this parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest the remaining third parties may have in the 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. S. J. Louis states it has competitors. In addition, S.J. Louis states the information at issue would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find S.J. Louis has established the release of the information it seeks to withhold would give advantage to a competitor or bidder. Thus, we conclude the city may withhold S.J. Louis' information at issue under section 552.104(a) of the Government Code.³ The city must release the remaining information.

²CCC argues section 552.305 of the Government Code applies to its information. We note section 552.305 is not an exception to disclosure under the Act. *See* Gov't Code § 552.305.

³As our ruling on this information is dispositive, we need not address the remaining arguments against its disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PS/jxd

Ref: ID# 763806

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)