



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 7, 2019

Ms. Shea Smith  
Assistant City Attorney  
City of Sugar Land  
P. O. Box 110  
Sugar Land, Texas 77487-0110

OR2019-12167

Dear Ms. Smith:

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# 763994 (ORR W006207).

The City of Sugar Land (the "city") received two requests from two requestors for information pertaining to a specified request for qualifications. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Federal Engineering, Inc. ("Federal Engineering"). Accordingly, you state, and provide documentation showing, you notified Federal Engineering of the request and of its right to submit arguments to this office. *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 received comments from Federal Engineering. We have considered the submitted arguments and have reviewed the submitted information.

Initially, we must address Federal Engineering's assertion that the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-06125 (2019). In that ruling, we determined the city may withhold the submitted information under section 552.104 of the Government Code. However, as the city no longer seeks to withhold the information at issue under section 552.104, the circumstances upon which the prior ruling were based have changed. Therefore, the city may not rely on Open Records Letter No. 2019-06125 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior

ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will consider whether any portion of the submitted information is excepted under the Act.

Next, we note the city only submitted the winning proposal. The first requestor seeks (1) the winning bid from the specified request for qualifications and (2) the evaluation results of the request for qualifications. To the extent information responsive to the remainder of the first request existed on the date the city received the request, we assume the city already released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the city has not yet released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We next address Federal Engineering's argument under section 552.153 of the Government Code. Section 552.153 protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides, in part, the following:

(a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by [s]ection 2267.001.

(b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:

(A) trade secrets of the proposer;

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible government entity or the proposer.

*Id.* § 552.153(a)-(b). Section 2267.001(10) of the Government Code provides “qualifying project” means the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technological facility, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to real property owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) provides “responsible governmental entity” means “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). Although Federal Engineering raises section 552.153, the city does not inform us, nor has Federal Engineering established, either that the city is a responsible governmental entity as defined by section 2267.001(11) of the Government Code, or that the information at issue relates to a proposal for a qualifying project authorized under chapter 2267 of the Government Code. Therefore, the city may not withhold any of the submitted information under section 552.153 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is

excepted from public release.<sup>1</sup> *See id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

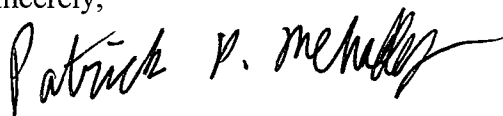
We note the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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](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,



Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/jxd

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 763994

Enc. Submitted documents

c: Requestor  
(w/o enclosures)