



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2019

Ms. Leslie Jean-Pierre
Assistant City Attorney
City of El Paso
P. O. Box 1890
El Paso, Texas 79950-1890

OR2019-19399

Dear Ms. Jean-Pierre:

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# 775334 (19-1044-1338).

The City of El Paso (the "city") received a request for (1) a specified contract; (2) the proposals and scoring sheets pertaining to the most recent bid process for the city's airport parking operation; and (3) financial information pertaining to the city's airport parking operation for a specified time period. You claim the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. The city also states release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Parking Systems of America L.P. ("PSA") and SP Plus Corporation ("SP Plus") 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 received comments from PSA. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the city failed to submit for our review information responsive to the request for scoring sheets pertaining to the most recent bid process for the city's airport parking operation and financial information pertaining to the city's airport parking operation for a specified time period. Thus, to the extent any information responsive to these portions of the request 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).

Although the city argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the city's argument under section 552.110. Next, 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 SP Plus explaining why its information should not be released. Therefore, we have no basis to conclude SP Plus has 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 SP Plus may have in it.

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. PSA states it has competitors. In addition, PSA states release of its information would give its competitors a competitive advantage. After review of the information at issue and consideration of the arguments, we find PSA has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold PSA's information under section 552.104(a).

The city asserts the remaining information is subject to section 552.104 "on the basis that a contract has been awarded for this proposal and the release of the information would give advantage to competitor or bidders." Upon review, we find the city has failed to establish the remaining information is subject to section 552.104 and it may not be withheld on that basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the submitted vehicle identification numbers under section 552.130 of the Government Code.

In summary, the city may withhold PSA's information under section 552.104(a) of the Government Code. The city must withhold the submitted vehicle identification numbers under section 552.130 of the Government Code. The city must release the remaining 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 775334

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)