



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Ms. Barbara J. Fox
Assistant County Attorney
Chambers County
P. O. Box 1200
Anahuac, Texas 77514

OR2019-21624

Dear Ms. Fox:

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# 778966.

Chambers County (the "county") received three requests from different requestors for specified bid proposals. Although the county takes no position regarding whether the submitted information is excepted from disclosure under the Act, the county informs us its release may implicate the proprietary interests of the following: Allegiance Bank ("Allegiance"), Anahuac National Bank, and Prosperity Bank. Accordingly, the county states, and provides documentation showing, it notified these third parties of the request for information and of their 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 have received arguments from Allegiance. We have considered the submitted arguments and reviewed the submitted information.

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) of the Government Code 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 only received comments from Allegiance explaining why the information at issue should not be

released. Thus, we have no basis to conclude the remaining third parties have 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, 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. Therefore, the county may not withhold 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 exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. Allegiance states it has competitors. In addition, Allegiance explains release of its information would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Allegiance has established the release of its information would give an advantage to a competitor or bidder. Accordingly, we conclude the county may withhold all of Allegiance’s information under section 552.104(a) of the Government Code.

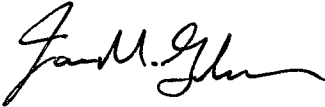
We note some of the remaining information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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 all of Allegiance’s information under section 552.104(a) of the Government Code. The county 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, 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,

A handwritten signature in black ink, appearing to read "James M. Graham". The signature is fluid and cursive, with a long horizontal stroke at the end.

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 778966

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)