



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Mr. Taylor Floyd
Assistant City Attorney
City of Dallas
1400 South Lamar, 6 FL 6W
Dallas, Texas 75215

OR2019-21644

Dear Mr. Floyd:

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# 778627 (ORR C003227-040919).

The City of Dallas (the "city") received a request for communications and information submitted by all companies that responded to a specified request for bids. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Good Earth Corporation. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its 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 considered the submitted arguments and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You state, and provide

documentation showing, the city received the clarified request for information on May 10, 2019. Thus, the city's ten business-day deadline was May 24, 2019. You do not inform us the city was closed on any business days between May 10, 2019, and May 24, 2019. However, you did not request a ruling or raise exceptions pursuant to section 552.301(b) until May 31, 2019. Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims section 552.104 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address your argument under this section. Accordingly, no portion of the submitted information may be withheld under section 552.104 based on the city's own interests. However, third party interests can provide a compelling reason to withhold information from disclosure.

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 requested information relating to it should be withheld from disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from the notified third party explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the third party's interests, and none of the submitted information may be withheld on that basis. *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. The city must release the submitted 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,

A handwritten signature in black ink, appearing to read 'SMC', is positioned above the typed name.

Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 778627

Enc. Submitted documents

c: Requestor
(w/o enclosures)