



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 10, 2019

Mr. Joseph R. Crawford  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2019-28549

Dear Mr. Crawford:

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# 790655 (GC No. 26007).

The City of Houston (the "city") received a request for all invoices, bills, and payments related to telecommunications services and equipment from a specified time period and invoices received from a specified third party during a specified time period.<sup>1</sup> 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 nine third parties: Southwestern Bell Telephone Co., d/b/a AT&T; Central Telephone Company of Texas, d/b/a CenturyLink; Department of Information Resources; Frontier Southwest

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<sup>1</sup> You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Incorporated; PS Lightwave, Inc. (“Lightwave”); Sprint Solutions, Inc.; Turtle & Hughes; Verizon Business Global, LLC (“Verizon”); and Windstream Corporation.<sup>2</sup> Accordingly, you state, and provide documentation showing, the city notified these third parties of the request for information and of their rights 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 Lightwave and Verizon. We have reviewed the submitted arguments and the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not relate to the specified time periods. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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 the remaining third parties explaining why the responsive information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in the responsive 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 the responsive information on the basis of any proprietary interests 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. Lightwave and Verizon state they have competitors. In addition, Lightwave and Verizon state their responsive information at issue, if released, would give their competitors an advantage. For many years, this office concluded the terms of a

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<sup>2</sup> You acknowledge the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider the public availability of the submitted information.

contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Lightwave and Verizon have established the release of their responsive information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the city may withhold Lightwave and Verizon's responsive information under section 552.104(a) of the Government Code.<sup>3</sup>

Some of the remaining responsive information is subject to section 552.136 of the Government Code.<sup>4</sup> Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the account numbers in the remaining responsive information under section 552.136 of the Government Code.

In summary, the city may withhold Lightwave and Verizon's responsive information under section 552.104(a) of the Government Code. The city must withhold the account numbers in the remaining responsive information under section 552.136 of the Government Code. The city must release the remaining responsive 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</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).

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Southerland". The signature is stylized and cursive.

Deborah Southerland  
Attorney  
Open Records Division

DS/gw

Ref: ID# 790655

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 9 Third Parties  
(w/o enclosures)