



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2019

Ms. Rebekah Wendt
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2019-32901

Dear Ms. Wendt:

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# 797917 (ORR# 26115).

The City of Houston (the "city") received a request for forty-four categories of information, including proposals and contracts related to Alliance, The Urban League, and MALDEF for Hurricane Harvey Programs; contracts for entities involved in housing assistance programs; and proposals for multifamily development projects. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of numerous third parties and named individuals, including ICF Incorporated, L.L.C. ("ICF"); the NRP Group, L.L.C. ("NRP"); Brinshore Development, L.L.C. ("Brinshore"); and Blazer Building Texas, L.L.C.; NH Briarwest, L.P.; MGroup Holdings, Inc. ("MGroup"); and Nantucket Housing, L.L.C. (collectively, "Blazer"). Accordingly, the city states, and provides documentation showing, it notified the third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 ICF, NRP, Brinshore, MGroup, and Blazer. We have reviewed the submitted arguments and the submitted information.

Initially, 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 or any of the named individuals explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties or any of the named individuals 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 the submitted information on the basis of any proprietary interest the remaining third parties or any of the named individuals may have in the information.

Next, we note Blazer and MGroup argue against the release of information that was not submitted by the city. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

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). 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. ICF, NRP, and Brinshore state they have competitors. In addition, ICF, NRP, and Brinshore state release of portions of their information at issue, which ICF marked and NRP and Brinshore noted, would place ICF, NRP, and Brinshore at a competitive disadvantage and would result in business harm to ICF, NRP, and Brinshore. After review of the information at issue and consideration of the arguments, we find ICF, NRP, and Brinshore have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold ICF's, NRP's, and Brinshore's information at issue, which we noted, under section 552.104(a) of the Government Code.¹

We note some of the materials 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

¹ As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

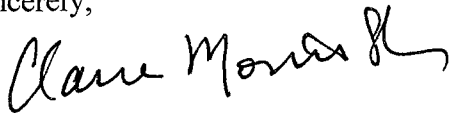
wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold ICF's, NRP's, and Brinshore's information at issue, which we noted, under section 552.104(a) of the Government Code. The city must release the remaining information; however, any information that is subject to copyright may be released only 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

Ref: ID# 797917

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)