KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2019

Ms. Shea Smith
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2019-34731

Dear Ms. Smith:

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# 800409 (COSL ORR W007831).

The City of Sugar Land (the "city") received a request for information pertaining to a specified request for qualifications. 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 AECOM Technical Services, Inc. ("AECOM"); Amani Engineering, Inc.; Arcadis U.S., Inc.; Arceneaux, Wilson, & Cole, LLC; Dannenbaum Engineering Corporation ("Dannenbaum"); Freese and Nichols, Inc.; Hazen and Sawyer; HDR Engineering, Inc.; KCI Technologies, Inc.; Sander Engineering Corporation; and TLC Engineering, Inc. ("TLC"). Accordingly, the city states, and provides documentation showing, it notified each 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 received comments from AECOM, Dannenbaum, and TLC. We have reviewed the submitted information and the submitted arguments.

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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the city may not withhold any portion of it 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.

AECOM, Dannenbaum, and TLC assert their information at issue is protected under section 552.104 of the Government Code. Section 552.104(a) 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. AECOM, Dannenbaum, and TLC state they have competitors. In addition, AECOM, Dannenbaum, and TLC state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find AECOM, Dannenbaum, and TLC have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we have indicated under section 552.104(a) of the Government Code.[1]

We note some of the remaining information is subject to section 552.136 of the Government Code.[2] Section 552.136 of the Government Code provides, "Notwithstanding 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the city may withhold the information we have indicated under section 552.104(a) of the Government Code. The city must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city must release the remaining information.

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[1] As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

[2] 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).

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,

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 800409

Enc. Submitted documents

c: Requestor
(w/o enclosures)

11 Third Parties
(w/o enclosures)