



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2019

Ms. Lisa K. Hargrove
General Counsel
Houston First Corporation
701 Avenida de las Americas, Suite 200
Houston, Texas 77010

OR2019-35510

Dear Ms. Hargrove:

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# 801984.

The Houston First Corporation (the "corporation") received a request for e-mails, including attachments, sent between a named individual and the corporation's board of directors since a specified date. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ You also state release of this information may implicate the proprietary interests of Texas Hospitality Partners, LLP c/o Horizon Group International ("THP"). Accordingly, you state, and provide documentation showing, the corporation notified THP 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 § 552.305(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 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 THP explaining why the submitted information should not be

¹ Although you also raise sections 552.101 through 552.147 of the Government Code, you make no arguments regarding these provisions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

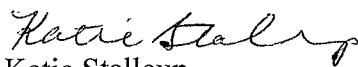
released. Therefore, we have no basis to conclude THP has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory 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 corporation may not withhold the submitted information on the basis of any proprietary interest THP 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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the submitted information pertains to an ongoing negotiation process for the proposed development of a hotel. You explain final agreements have not been signed or approved by the corporation. You also state release of the submitted information would harm the corporation’s “attempts to obtain the best offer and conditions for the development by providing competing parties the competitive advantage of knowing what” the corporation will accept. After review of the submitted information and consideration of the arguments, we find the corporation has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the corporation may withhold the submitted information under section 552.104(a) of the Government Code.²

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,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 801984

Enc. Submitted documents

c: Requestor
(w/o enclosures)