



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Courtney M. White  
Assistant City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2019-36331

Dear Ms. White:

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# 800346 (ORR Nos. 2353 and 2354).

The City of Amarillo (the "city") received two requests from different requestors for information pertaining to a specified request for proposals. You state the city released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of AECOM Technical Services, Inc.; Federal Engineering, Inc.; Mission Critical Partners, LLC ("MCP"); and Winbourne Consulting, LLC.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the information at issue 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 received arguments from MCP. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note, and you acknowledge the city did not comply with the procedural requirements of section 552.301 of the Government Code with respect to a portion of the requested information. *See* Gov't Code § 552.301(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 information at issue.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest any remaining third party 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. MCM states it has competitors. In addition, MCM states release of portions of its information would cause harm to its competitive interests and would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find MCM has established the release of its information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we marked under section 552.104(a) of the Government Code. The city must release the remaining 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 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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/gw

Ref: ID# 800346

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

c: 4 Third Parties  
(w/o enclosures)