



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2020

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

OR2020-00080

Dear Ms. Thomas:

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# 803973 (GC No. 26237).

The City of Houston (the "city") received a request for the application and site plan pertaining to a specified location. You state the city will release some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of EBI Consulting ("EBI").¹ Accordingly, you state, and provide documentation demonstrating, the city notified EBI 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 reviewed the submitted information.

Initially, we note the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No.

¹ We note in a letter dated December 13, 2019, we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). As of the date of this letter, this office has not received a response to our correspondence.

2019-27322 (2019). In that ruling, we concluded the city may withhold certain information under section 552.104 of the Government Code and must release the remainder of the information at issue. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2019-27322 was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city may continue to rely on Open Records Letter No. 2019-27322 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will consider whether the submitted information is excepted from disclosure.

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 EBI explaining why the information at issue should not be released. Thus, we have no basis to conclude EBI has a protected proprietary interest in the information at issue. *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. Therefore, the city may not withhold any portion of the submitted information on the basis of any proprietary interest EBI may have in it.

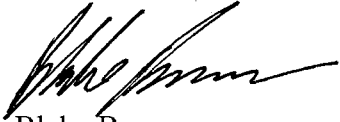
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city may continue to rely on Open Records Letter No. 2019-27322 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2019-27322, the city must release such 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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 803973

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)