



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2020-00807

Dear Mr. Murray:

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# 805113 (PIR No. W092145).

The City of Fort Worth (the "city") received a request for information pertaining to specified contracts for a specified time period. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Referees and Umpires d/b/a Tri-County Officials Association ("Tri-County"); and CoCo Sports Officials. Accordingly, you state, and provide documentation showing, the city 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 § 552.305(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 Tri-County. We have considered the submitted arguments and reviewed the submitted information.

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 party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party 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 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.”¹ 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. Tri-County states it has competitors. In addition, Tri-County states release of its information will provide its competitors with an economic advantage to its success as an association craft and would cause Tri-County substantial harm. After review of the information at issue and consideration of the arguments, we find Tri-County has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Tri-County’s information under section 552.104(a) of the Government Code on behalf of Tri-County.² The city must release the remaining information.³

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,



Pearlie Gault
Attorney
Open Records Division

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¹ Although Tri-County does not cite to section 552.104 of the Government Code in its brief, we understand Tri-County to raise this exception based on the substance of its arguments.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of Tri-County’s information

³ The information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental bod to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

Ref: ID# 805113

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)