



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Ms. Sol M. Cortez
Senior Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2020-02035

Dear Ms. Cortez:

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# 807660 (City's Case No. 19-1044-1444).

The City of El Paso (the "city") received a request for information pertaining to a specified solicitation. You claim the submitted information is excepted from disclosure under section 552.104 and 552.110 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of Stericycle, Inc. ("Stericycle"). Accordingly, the city states, and provides documentation showing, it notified Stericycle 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 considered the submitted arguments and reviewed the submitted information.

Although the city argues the submitted information is subject to section 552.110 of the Government Code, we note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the city's argument under section 552.110 of the Government Code. 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 Stericycle explaining why the submitted information should not be released. Accordingly, we have no basis to conclude Stericycle 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.

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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the city has not established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the city may not withhold the submitted information under section 552.104(a) of the Government Code.

We note portions of the submitted information are subject to section 552.136 of the Government Code.¹ Section 552.136 of the Government Code provides, “[n]otwithstanding 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. Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy numbers in the submitted information under section 552.136 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

¹ 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).

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,

A handwritten signature in cursive script that reads "D. michelle c". The signature is written in black ink and is positioned above the typed name.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/be

Ref: ID# 807660

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)