



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road, Building One
Cedar Park, Texas 78613

OR2020-03842

Dear Ms. Quinn:

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# 810749 (Ref. No. CS20-56).

The City of Cedar Park (the "city") received a request for the proposals submitted in response to a specified request for proposals. 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 the following third parties: Aerial Metrix, LLC; HDR, Inc. ("HDR"); Magnolia River Services, Inc. ("Magnolia"); NewEdge Services, LLC; and Timmons Group. Accordingly, you state, and provide documentation demonstrating, the city notified these interested third parties of the request for information and of their 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 HDR and Magnolia. 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). We note that although HDR has submitted correspondence to this office, it does not make any arguments against disclosure of its information. Further, we note, as of the date of this letter, we have not received comments from any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have 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 the remaining third parties may have in it.

Magnolia asserts portions of its information at issue are excepted from disclosure under section 552.104 of the Government Code.¹ Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. Magnolia states it has competitors and asserts release of portions of its information at issue would provide a competitive advantage to those competitors. After review of the information at issue and consideration of the arguments, we find Magnolia has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, the city may withhold the information we marked under section 552.104(a) of the Government Code. As no further exceptions to disclosure have been raised, 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.

¹ We note Magnolia also raises section 552.1101 of the Government Code. The Eighty-sixth Legislature amended section 552 of the Government Code to include section 552.1101. Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 5 (to be codified at Gov't Code § 552.1101). However, the amended law applies only to a request for information that the governmental body receives on or after January 1, 2020, the effective date of the amendment. *Id.* A request for information received before the effective date of the amendment is governed by the law in effect on the date the governmental body received the request. Here, the city received the present request on November 20, 2019. Thus, we do not address Magnolia's arguments under section 552.1101.

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/jxd

Ref: ID# 810749

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 5 Third Parties
(w/o enclosures)