



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2020

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2020-06201

Dear Mr. Falgoust:

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# 813751 (PIR# X004662).

The City of Austin (the "city") received a request for proposals related to a specified award.¹ 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 Badger Meter, Inc. ("Badger"). Accordingly, you state, and provide documentation showing, you notified Badger of the request for information and of its 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 have reviewed the submitted information.

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) of the Government Code 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,

¹ We note the city did not comply with the requirements of section 552.301(b) of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, we note the interests of a third party can provide compelling reasons to overcome the presumption of openness. Accordingly, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

we have not received comments from Badger explaining why the submitted information should not be released. Therefore, we have no basis to conclude Badger 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 any portion of the submitted information on the basis of any proprietary interest Badger may have in the information. As no exceptions to disclosure have been raised, the city must release the submitted 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 813751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)