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ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Kyle T. Dickson
Counsel for the Austin County Appraisal District
Perdue Brandon Fielder Collins & Mott, LLP
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2020-07075

Dear Mr. Dickson:

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# 815264.

The Austin County Appraisal District (the "district"), which you represent, received a request for all proposals submitted in response to a specified request for proposals, including all information submitted by a named entity. The district states it released some information to the requestor with redactions. The district claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ Additionally, the district states release of the submitted information may implicate the proprietary interests of Pictometry International Corporation d/b/a Eagle View ("Pictometry"). Accordingly, the district states, and provides documentation showing, it notified Pictometry of the request for information and of its right to submit arguments to this office. *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

¹ Although the district also raises section 552.110 of the Government Code, we note that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from another person). Therefore, we do not address the district's assertion of section 552.110 of the Government Code.

circumstances). We have received comments from Pictometry. We have considered the submitted arguments and reviewed the submitted information.

The Eighty-sixth Legislature amended the Act to include section 552.1101 of the Government Code. Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 5 (to be codified at Gov't Code § 552.1101). However, section 552.1101 applies only to a request for information that a governmental body receives on or after January 1, 2020, the effective date of the amendment. Act of May 25, 2019, 86th Leg., R.S., S.B. 943, §§ 5, 10. 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. The district received the request prior to January 1, 2020. Therefore, section 552.1101 is not applicable to the submitted information and the district may not withhold it from release on that ground. Pictometry does not make any other argument to withhold the information at issue. Therefore, we will address the district's argument against disclosure of the information at issue.

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). Although the district raises section 552.104, we find the district failed to establish the release of the information at issue would give advantage to a competitor or bidder. Therefore, the district may not withhold any of the information at issue under section 552.104(a) of the Government Code.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, the district must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 815264

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)