



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Ms. Cherelle Sims  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2019-08529

Dear Ms. Sims:

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# 817323 (File# 20PIA0009).

The Office of the Harris County Purchasing Agent (the "county") received a request for all winning technical and price proposals submitted in response to a specified request for qualifications. 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 BGE, Inc. ("BGE"); Cobb, Fendley & Associates, Inc.; Halff Associates, Inc. ("Halff"); LJA Engineering, Inc. ("LJA"); Lockwood, Andrews & Newnam, Inc.; and R. G. Millers Engineers, Inc. ("RGM"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 received comments from BGE, Halff, LJA, and RGM. 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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any 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 county may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

We note RGM argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the county has submitted to us for our review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the county submitted as responsive to the request for information.<sup>1</sup>

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.”<sup>2</sup> *Id.* § 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. BGE, Halff, LJA, and RGM state they have competitors. BGE, Halff, LJA, and RGM state release of their information would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find BGE, Halff, LJA, and RGM have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have marked and indicated under section 552.104(a) of the Government Code.<sup>3</sup>

LJA raises section 552.110(b) of the Government Code for some of its remaining information. Section 552.110(b) protects “[c]ommercial or financial information for which

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<sup>1</sup> As we are able to make this determination, we need not address RGM’s arguments against disclosure of the information at issue.

<sup>2</sup> Although the Halff does not cite to section 552.104 of the Government Code in its brief to this office, we understand it to raise section 552.104 based on the substance of its arguments. We further note Halff and LJA raise 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 county received the present request on December 23, 2019. Thus, we do not address the arguments under section 552.1101.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

Upon review, we find LJA has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the county must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find LJA has not demonstrated that substantial competitive injury would likely result from the release of any of its remaining information. *See* Open Records Decision Nos. 661, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Therefore, the county may not withhold any of LJA’s remaining information under section 552.110(b) of the Government Code.

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.”<sup>4</sup> 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. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the county must withhold the insurance policy numbers under section 552.136 of the Government Code.

In summary, the county may withhold the information we have marked and indicated under section 552.104(a) of the Government Code. The county must withhold the information we have marked under section 552.110(b) of the Government Code. The county must withhold the insurance policy numbers under section 552.136 of the Government Code. The county 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

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<sup>4</sup> 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).

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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/mo

Ref: ID# 817323

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Party  
(w/o enclosures)