



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Mr. Brandon S. Davis  
Counsel for the City of Dayton  
Fielder & Davis  
1517 Trinity Street  
Liberty, Texas 77575-4628

OR2020-10756

Dear Mr. Dayton:

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# 821528.

The City of Dayton (the "city") received a request for the winning proposal for a specified solid waste contract. 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 Frontier K2, LLC ("Frontier"). Accordingly, you state, and provide documentation showing, you notified Frontier 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 received comments from Frontier. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Frontier argues the entirety of its proposal is excepted from disclosure pursuant to section 552.101 in conjunction with section 252.049 of the Local Government Code. Section 252.049 provides:

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Local Gov't Code § 252.049(a), (b). This provision merely duplicates the protection section 552.110 of the Government Code provides to trade secret and commercial or financial information. Therefore, we will address Frontier's arguments with respect to section 252.049 of the Local Government Code under sections 552.110 and 552.1101 of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which 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(c). Frontier argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Frontier has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent the customer information we have marked is not publicly available on Frontier's website, the city must withhold the customer information we have marked under section 552.110(c) of the Government Code.<sup>1</sup> However, to the extent the customer information at issue is publicly available on Frontier's website, we find the city may not withhold the customer information at issue under section 552.110(c) of the Government Code. Regardless, the city must withhold the remaining information at issue, which we have marked, under section 552.110(c).<sup>2</sup>

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

*Id.* § 552.110(a). Upon review, we find Frontier has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the city may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Upon review, we find Frontier has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the city may not withhold it on that basis.

In summary, to the extent the customer information we have marked is not publicly available on Frontier's website, the city must withhold the customer information we have marked under section 552.110(c) of the Government Code. Regardless, the city must withhold the remaining information at issue, which we have marked, under section 552.110(c). 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 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/jxd

Ref: ID# 821528

Enc. Submitted documents

c: Requestor  
(w/o enclosures)