



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2020

Mr. Mark Triesch
Assistant City Attorney
City of San Antonio - Aviation Department
Terminal A - Mezzanine
9800 Airport Boulevard
San Antonio, Texas 78216-9990

OR2020-13273

Dear Mr. Triesch:

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# 827721 (COSA File No W306458-021920).

The City of San Antonio (the "city") received a request for information pertaining to SAIA Package 5 Project and SAIA Package 6 Project, excluding six categories of information.¹ You state the city has released some of the requested information. 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 third parties. Accordingly, you state, and provide documentation showing, you notified Austin Bridge & Road, LP ("ABR"); Flatiron Constructors, Inc. ("Flatiron"); and J3 Company, LLC ("J3") 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 ABR and Flatiron. We have considered the submitted arguments and reviewed the submitted information.

¹ We note the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note the requestor excluded from the request the following categories of information: company financial information; client list; tax identification numbers and social security numbers; insurance certificate and policy numbers; proposal bond and bond numbers; and discretionary contracts disclosure forms. Accordingly, these types of information are not responsive to the instant request. The city need not release non-responsive information in response to this request, and this ruling will not address that information.²

We also note ABR and Flatiron assert exceptions to the required public disclosure of information the city has not submitted for our review. This ruling does not address information beyond what the city has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the request for information. *See id.*

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from J3 explaining why its information should not be released. Therefore, we have no basis to conclude J3 has a protected proprietary interest in the requested information. *See id.* § 552.110. Accordingly, the city may not withhold any of the information at issue on the basis of any proprietary interest J3 may have in it.

ABR and Flatiron raise section 552.104 of the Government Code for their information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address ABR's or Flatiron's arguments under section 552.104.

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). ABR and Flatiron argue some of thier information consists of commercial or financial information subject to section 552.110(c). Upon review, we find ABR and Flatiron have demonstrated their responsive

² As we are able to make this determination, we need not address ABR's or Flatiron's arguments against disclosure of this information.

customer information constitutes commercial or financial information, the release of which would cause substantial competitive harm to the companies. Accordingly, the city must withhold the customer information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information we have marked is publicly available on ABR's or Flatiron's websites, it may not be withheld under section 552.110(c).³ However, we find ABR and Flatiron have failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, city may not withhold any of the remaining responsive information at issue under section 552.110(c) of the Government Code.

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.

Id. § 552.110(a). ABR and Flatiron argue their remaining responsive information consists of trade secrets subject to section 552.110(b). Upon review, we find ABR and Flatiron have failed to provide specific factual evidence demonstrating any portion of the remaining responsive information is a trade secret. Therefore, the city may not withhold any of the remaining responsive information 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;

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

(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). ABR and Flatiron assert disclosure of their remaining responsive information would reveal an individual approach to work, organizational structure, stating, internal operations, and processes and give advantage to a competitor. Upon review, we find ABR and Flatiron have failed to provide the specific factual evidence necessary to withhold any of the remaining responsive at issue under section 552.1101(a), and city may not withhold it on that basis.

In summary, the city must withhold the customer information we marked under section 552.110(c) of the Government Code; however, to the extent the customer information we have marked is publicly available on ABR's or Flatiron's websites, it may not be withheld 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jlbm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)