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ATTORNEY GENERAL OF TEXAS

May 27, 2020

Mr. Christopher D. Leavins
Counsel for the City of Vidor
Germer P.L.L.C.
550 Fannin, Suite 400
Beaumont, Texas 77701

OR2020-14645

Dear Mr. Leavins:

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# 830132.

The City of Vidor (the "city"), which you represent, received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.1101 of the Government Code.¹ Additionally, we understand release of the submitted information may implicate the proprietary interests of Discovery Information Technologies ("Discovery IT"). Accordingly, pursuant to section 552.305 of the Government Code, you were required to notify Discovery IT of the request for information and of its 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 considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), the governmental body must ask for the

¹ Although the city also raises section 552.101 of the Government Code, the city has not provided any arguments to support this exception. Therefore, we assume the city has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The city received the request for information on January 7, 2020. We understand the city was closed on January 20, 2020. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by January 22, 2020. Moreover, you were required to provide the information required by section 552.301(e) by January 29, 2020. However, you did not request a ruling from this office, or submit the information required under section 552.302(e) to the office, until March 20, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim sections 552.110 and 552.1101 for the submitted information. However, we note sections 552.110 and 552.1101 protect the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. Accordingly, we do not consider the city's arguments under sections 552.110 and 552.1101. *See* Gov't Code § 552.110 (section excepts from disclosure trade secrets and commercial or financial information obtained from person); *id.* § 552.1101(c) (section excepts from disclosure certain information submitted to a governmental body). However, because third party interests can provide a compelling reason to overcome the presumption of openness against disclosure of the submitted information, we will consider whether the submitted information may be withheld on behalf of Discovery IT.

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 Discovery IT explaining why the submitted information should not be released. Therefore, we have no basis to conclude Discovery IT 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 the submitted information on the basis of any proprietary interest Discovery IT may have in the information. As no further 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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/be

Ref: ID# 830132

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)