



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2020

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2020-18442A

Dear Mr. Crawford:

This office issued Open Records Letter No. 2020-18442 (2020) on July 23, 2020. Since that date, we have received new information that affects the facts on which this ruling was based. *See* Gov't Code §§ 552.306, .352. Consequently, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2020-18442 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 853486 (GC No. 26684).

The City of Houston (the "city") received a request for a specified contract. You claim some of the submitted information is excepted from disclosure under section 552.0222 of the Government Code. You also state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Reliant Energy Retail Services, L.L.C. ("Reliant") 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 received comments from Reliant. We have considered the submitted arguments and reviewed the submitted information.

We note Reliant asserts exceptions to the required public disclosure of information that is not responsive to the present request and which 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.*

Section 552.110(c) of the Government Code states:

(c) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Id. § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Reliant argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Reliant has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code.¹ However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Therefore, the city may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, 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). As previously noted, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Reliant argues its remaining information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Therefore, the city may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

¹ As our ruling on this information is dispositive, we need not address the remaining arguments against its disclosure.

Finally, the city asserts portions of the remaining information are confidential pursuant to section 552.0222(c) of the Government Code. Section 552.0222 states in relevant part:

(a) Contracting information is public and must be released unless excepted from disclosure under this chapter.

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

...

(3) the following contract or offer terms or their functional equivalent:

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price;

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract;

...

(c) Notwithstanding Subsection (b), information described by Subdivisions (3)(A) and (B) of that subsection that relates to a retail electricity contract may not be disclosed until the delivery start date.

Id. § 552.0222(a), (b)(3)(A)-(B), (c). The city seeks to withhold the information subject to section 552.0222(b) on the basis of section 552.0222(c). You state the information at issue consists of a retail electricity contract. We note the delivery start date for the contract at issue has passed. Therefore, section 552.0222(c)(3) is not applicable to the information at issue and may not be withheld on that basis.

In summary, the city must withhold the information we marked under section 552.110(c) of the Government Code. 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/rm

Ref: ID# 836488

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)