



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2020

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

OR2020-20737A

Dear Mr. Crawford:

This office issued Open Records Letter No. 2020-20737 (2020) on August 18, 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. 2020-20737 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# 840701 (GC No. 26719).

The City of Houston (the "city") received a request for a specified contract, as well as related documents and cost projections. 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.¹ 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

¹ We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

received comments from Reliant. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for ruling, as a result of which this office issued Open Records Letter No. 2020-18442A (2020). We understand the law, facts, or circumstances on which Open Records Letter No. 2020-18442A was based have not changed. Thus, the city must continue to rely on Open Records Letter No. 2020-18442A as a previous determination and withhold or release the information at issue in accordance with that ruling.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider the submitted arguments against disclosure of the information not subject to the previous ruling.

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). Reliant argues the information that is not subject to the previous ruling consists of commercial or financial information subject to section 552.110(c). Upon review, we find Reliant has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the remaining information at issue, which we have marked, under section 552.110(c) of the Government Code.³

In summary, the city must continue to rely on Open Records Letter No. 2020-18442A as a previous determination and withhold or release the information at issue in accordance with that ruling. The city must withhold the remaining information, which we have marked, under section 552.110(c) of the Government Code.

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

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/eb

Ref: ID# 840701

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)