



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 28, 2020

Mr. Michael Muscarello
Interim City Secretary
City of Webster
101 Pennsylvania Avenue
Webster, Texas 77598

OR2020-21664

Dear Mr. Muscarello:

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# 842314 (Request No. CH-126-2020).

The City of Webster (the "city") received a request for information pertaining to a specified address. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Bonner Carrington ("Bonner") and R.G. Miller Engineers. Accordingly, you state, and provide documentation showing, you notified the third parties 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 Bonner. We have considered the submitted arguments and reviewed the submitted representative sample information.¹

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

the date of this ruling, we have not received comments from the remaining third party. Thus, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest the remaining third party may have in the information.

Bonner argues the submitted information is subject to section 552.110 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). Bonner argues the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Bonner 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 submitted information 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 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,

Pearlie Gault
Attorney
Open Records Division

PG/be

Ref: ID# 842314

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)