



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2020

Ms. DeAndrea Petty
City Attorney
City of Marlin
P.O. Box 980
Marlin, Texas 76661

OR2020-21811

Dear Ms. Petty:

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# 842167.

The City of Marlin (the "city") received a request for twenty-two categories of information. You claim some of the requested information is subject to a previous ruling by our office. You also claim the submitted information is excepted from disclosure under sections 552.104 and 552.136 of the Government Code. Additionally, we understand release of the submitted information may implicate the proprietary interests of Frontier Waste Solutions and Waste Connections. Accordingly, pursuant to section 552.305 of the Government Code, you were required to notify these 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 considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-02279 (2020). In that ruling, we determined the city may withhold the submitted information under section 552.116 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city may rely on Open Records

Letter No. 2020-02279 as a previous determination and withhold the identical information in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2020-02279, we will consider whether any portion of the submitted information is excepted under the Act.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have 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 the submitted information on the basis of any proprietary interest the third parties may have in the information.

Next, we note that you have not submitted information responsive to all twenty-two categories of information requested in response to the request. To the extent any additional responsive information existed on the date the city received this request, we assume the city has released it. If the city has not released any such records, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the city may not withhold the submitted information under section 552.104(a) of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find you have failed to demonstrate any of the information at issue consists of a credit card, debit

card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find the city may not withhold any of the submitted information under section 552.136 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the city may rely on Open Records Letter No. 2020-02279 as a previous determination and withhold the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by the previous ruling, 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/mo

Ref: ID# 842167

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)