



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2020

Ms. Rebekah Wendt
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-22706

Dear Ms. Wendt:

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# 843620 (GC No. 26771).

The City of Houston (the "city") received a request for the bid tabulation related to solicitation L26009. Although the city takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Clifford Power Systems ("Clifford"); Mnl Diesel, LLC; Kentech, Inc.; Power Field Services; Total Energy Solutions; and Waukesha Pearce Industries. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Clifford. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-16659 (2017). In Open Records Letter No. 2017-16659, we determined the city must withhold some information under section 552.110(b) of the Government Code and must release the remaining information. We note section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the

governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the information previously released pursuant to Open Records Letter No. 2017-16659 unless its release is expressly prohibited by law or the information is confidential by law. We also note Clifford now seeks to withhold information that was previously ordered released by the prior ruling under section 552.110 of the Government Code.¹ Because information subject to section 552.110 is deemed confidential by law, we will address Clifford's argument under this exception for its information, which was previously ordered released. With respect to the information previously withheld in Open Records Letter No. 2017-16659, we note section 552.110 of the Government Code was amended by the 86th Legislature. Thus, the law on which the prior ruling was based has changed. *See* Gov't Code § 552.110. Accordingly, as the relevant law has changed, the city may not rely on Open Records Letter No. 2017-16659 as a previous determination. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a "previous determination").

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) of the Government Code 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any 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 the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Clifford raises section 552.110 for portions of the submitted information. 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." *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

¹ Although Clifford does not explicitly raise section 552.110(b) of the Government Code, we understand Clifford to raise this exception based on the substance of its argument.

through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). As discussed above, the information Clifford seeks to withhold was ordered released in Open Records Letter No. 2017-16659. Since the issuance of the previous ruling, Clifford has not disputed this office's conclusion regarding the release of the information at issue. Accordingly, we find Clifford has not taken any measures to protect its information in order for this office to conclude the information now qualifies as a trade secret. Therefore, the city may not withhold any of Clifford's information under section 552.110(b) of the Government Code. 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 843620

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)