



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 17, 2020

Ms. Charla Thomas
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2020-23471

Dear Ms. Thomas:

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# 844565 (Request No. 20-1494).

The City of Temple (the "city") received a request for a specified agreement and proposal submitted by a named company. Although the city takes no position as to whether the submitted information is excepted from disclosure under the Act, the city states release of the submitted information may implicate the proprietary interests of Turner Behringer Temple One, LLC ("Turner").¹ Accordingly, the city states, and provides documentation showing, it notified Turner 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(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 reviewed the submitted information.

¹ We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.1175 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the submitted information must be withheld under the Act on those grounds. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Initially, we note you have not submitted the specified agreement. To the extent the specified agreement existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 Turner explaining why the submitted information should not be released. Therefore, we have no basis to conclude Turner 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 Turner may have in the information.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies to “a current or former member of the United States Army, Navy, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001[.]” *Id.* § 552.1175(a)(15). We note the individual whose information is at issue is an individual who is subject to section 552.1175(a)(15). Thus, to the extent the information we marked pertains to an individual who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue does not elect to restrict access to the information in accordance with section 552.1175(b), then this information may not be withheld under section 552.1175. 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 844565

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)