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ATTORNEY GENERAL OF TEXAS

December 11, 2020

Mr. Steven Pena, Sr., LL.M
Attorney for the City of Asherton
Davidson, Troilo, Ream & Garza, PC
601 Northwest Loop 410, Suite 100
San Antonio, Texas 78216-5511

OR2020-31108

Dear Mr. Pena:

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# 857728.

The City of Asherton (the "city"), which you represent, received a request for the bid submitted by First State Bank of Uvalde ("First Bank") and related voting information. 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 First Bank. Accordingly, you state, and provide documentation showing, you notified First Bank 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 First Bank. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the city has not submitted the requested voting information. To the extent information responsive to this portion of the request 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).

First Bank raises section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, First Bank has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code.

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.” *See* Gov’t Code § 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 through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). We note section 552.0222(b) of the Government Code lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). First Bank asserts the submitted information consists of trade secrets. However, we find the submitted information is either subject to section 552.0222(b) or First Bank has failed to provide specific factual evidence demonstrating the information at issue is a trade secret. *See id.* Therefore, the city may not withhold the submitted information under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code states:

- (c) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Id. § 552.110(c). As noted above, section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). First Bank asserts the submitted information consists of commercial or financial information subject to section 552.110(c). However, we find the submitted information is either subject to section 552.0222(b) or First Bank has failed to provide specific factual evidence demonstrating the information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. *See id.* Therefore, the city may not withhold the submitted information under section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). We note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). First Bank asserts disclosure of the submitted information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing and give advantage to a competitor. However, we find the submitted information is either subject to section 552.0222(b) or First Bank has failed to provide specific factual evidence demonstrating the information at issue is subject to section 552.1101(a). *See id.* Therefore, the city may not withhold the submitted information under section 552.1101(a). As no other exceptions to disclosure have been raised, 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/rm

Ref: ID# 857728

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)