



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Ms. Laura C. Davis
Counsel for Memorial-Heights Redevelopment Authority
Sanford Kuhl Hagan Kugle Parker Kahn, LLP
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056

OR2022-03488

Dear Ms. Davis:

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# 929792.

The Memorial-Heights Redevelopment Authority (the "authority"), which you represent, received a request for information pertaining to a specified solicitation. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.1101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Aurora Technical Services ("Aurora"); B2Z Engineering; CDM Smith, Inc ("CDM"); HTS, Inc. Consultants; IDCUS, Inc.; KIT Professionals, Inc.; Paradigm Consultants, Inc.; Projeplan Services, LLC; Sowell's Consulting Engineer; and Texan Construction Solutions. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Aurora and CDM. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the authority has only submitted the statements of qualification. The authority has not submitted information responsive to the remaining categories of requested information. We assume, to the extent any information responsive to the remaining categories of requested information existed on the date the authority received the request,

the authority has released it. If the authority has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .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 any remaining third party 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 authority may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Although we understand the authority to argue the submitted information is excepted under sections 552.110 and 552.1101 of the Government Code, these exceptions are designed to protect the interests of third parties, not the interests of a governmental body. *See id.* §§ 552.110(b)-(c), 552.1101(c). Thus, we do not address the authority's arguments under sections 552.110 or 552.1101 of the Government Code.

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

- (a) . . . [I]nformation 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). CDM asserts disclosure of some of its information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing methodology and give advantage to a competitor. Upon review, we find CDM has demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the authority must withhold the information we indicated under section 552.1101 of the Government Code.¹

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[.]” *Id.* § 552.110(c). Aurora generally argues its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Aurora has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the authority may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See 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 through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Aurora generally argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Aurora has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the authority may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the authority must withhold the information we indicated under section 552.1101 of the Government Code. The authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The authority 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/be

Ref: ID# 929792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)

² 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).