



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Mr. Tyrone Lin  
Senior Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2022-06384

Dear Mr. Lin:

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# 933593 (Ref. No. R048272).

The City of Houston (the "city") received a request for information pertaining to a specified solicitation. 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 Pure Technologies US d/b/a Wachs Water Services ("Pure"). Accordingly, you state, and provide documentation showing, you notified Pure of the request for information and of its 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 received comments from Pure. We have reviewed the submitted information and considered the submitted arguments.<sup>1</sup>

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

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<sup>1</sup> We note the submitted information includes information the requestor's bid. As we assume the requestor does not seek access to the requestor's own bid, we do not address the public availability of that information.

that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure].

Gov't Code § 552.110(c).<sup>2</sup> Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Pure argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Pure has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code.<sup>3</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find Pure has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Pure asserts the remaining information at issue is subject to section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

*Id.* § 552.131(a)-(b). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(c). Because we have already disposed of Pure's claims under section 552.110, the city may not withhold any of the

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<sup>2</sup> Although Pure does not cite to section 552.110(c) of the Government Code in its brief, we understand Pure to raise this exception based on the substance of its argument.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

information at issue under section 552.131(a) of the Government Code. We note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the city does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the information at issue is excepted under section 552.131(b) of the Government Code.

In summary, the city must withhold the information we marked under section 552.110(c) of the Government Code. 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,

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/jm

Ref: ID# 933593

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)