



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2022

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

OR2022-08088

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# 937537 (Ref. No. R049795).

The City of Houston (the "city") received a request for a specified bid tabulation. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of DAX Automation; Globe Electric Supply, Inc.; Pacific Star Corporation; and TIC International, Inc. ("TIC"). Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their 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 TIC.¹ We have reviewed the submitted information and considered the submitted arguments.

Initially, 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) 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 of the remaining third parties have protected proprietary interests in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating

¹ Although TIC does not cite to section 552.110 of the Government Code, we understand TIC to assert this exception based on its arguments.

the applicability of the exception). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the 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.” *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). 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). TIC argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Additionally, we find TIC has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Therefore, the city may not withhold any of the information at issue under section 552.110(b) of the Government Code. As no further 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/be

Ms. Rebekah Wendt - Page 3

Ref: ID# 937537

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)