



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2022

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2022-13141

Dear Ms. Leininger:

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# 946379 (ORR #P003089).

The City of Pearland (the "city") received a request for certain information pertaining to a specified request for proposals. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Capital One Bank, Frost Bank, Prosperity Bank ("Prosperity"), and Wells Fargo Bank. Accordingly, you state, and provide documentation showing, you notified these third parties 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 received comments from Prosperity. We have considered the submitted arguments and reviewed the submitted information.

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

Prosperity raises section 552.110 of the Government Code for some of the remaining information at issue. Section 552.110(c) provides:

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). Upon review, we find Prosperity demonstrated some of its information at issue, including its client information, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we have marked under section 552.110(c) of the Government Code; however, to the extent the customer information at issue is made available to the public by Prosperity, including but not limited to on its website or social media accounts, such information may not be withheld under section 552.110.¹ Further, we find Prosperity has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret. Moreover, we find Prosperity 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 portion of the remaining information at issue under section 552.110 of the Government Code.

Prosperity raises section 552.1101(a) of the Government Code for some of the information at issue. Section 552.1101(a) of the Government Code provides:

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;

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

(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), (b). Additionally, 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). Upon review, we find Prosperity has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the city must withhold the information we have marked under section 552.1101(a) of the Government Code. However, we find Prosperity has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the city may not withhold any portion of the remaining information under section 552.1101(a) of the Government Code.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the routing and bank account numbers we marked under section 552.136 of the Government Code.

Prosperity asserts some of their information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we marked under section 552.110(c) of the Government Code and the information we marked under section 552.1101(a) of the Government Code; however, to the extent the customer information at issue is made available to the public by Prosperity, including but not limited to on their website or social media account, such information may not be withheld under section 552.110 of the Government Code. The city must withhold the routing and bank account numbers we marked under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 946379

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)