



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2022

Ms. Amanda Brown  
Deputy City Attorney  
City of Denton  
215 East McKinney Street  
Denton, Texas 76201

OR2022-19598

Dear Ms. Brown:

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# 957480 (Ref. No. C000527-041822).

The City of Denton (the "city") received a request for the scoring sheets, winning contract, and proposals submitted in response to a specified request for proposals. 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 Brandstetter Carroll, Inc.; Bureau Veritas Technical Assessments LLC; Parkhill, Smith & Cooper, Inc.; Roth IAMS LLC; and Terracon Consultants, Inc. ("Terracon"). 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 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 Terracon. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted the requested scoring sheets or the winning contract. Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we note Terracon argues against the release of information that was not submitted by the city. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the instant request for information.

Next, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why info relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of 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 any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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." *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). 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). Section 552.1101 of the Government Code provides, in relevant part, as follows:

(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 contract 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) organization 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). Terracon argues its information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Terracon demonstrated portions of its 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>1</sup> However, we find Terracon has failed to provide specific factual evidence demonstrating the remaining information at issue is a trade secret or 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(b) or section 552.110(c) of the Government Code.

Terracon asserts some of its remaining information is subject to section 552.1101(a) and its release would give advantage to a competitor. Upon review, however, we find Terracon 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 of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.136(b) 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 government body is confidential.”<sup>2</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup> 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).

We note some of the materials at issue may be 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. The city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city must release the remaining information; however, any information protected by 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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/mo

Ref: ID# 957480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)