



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2022

Mr. Christopher Mullins  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2022-19624

Dear Mr. Mullins:

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# 958622 (Ref. No. R003658-040722).

The City of Fort Worth (the "city") received a request for the top two proposals related to a named request for proposals.<sup>1</sup> 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 several third parties.<sup>2</sup> 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

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<sup>1</sup> You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> The third parties at issue are as follows: BGE, Inc. ("BGE"); Cobb, Fendley & Associates, Inc. ("Cobb"); Freese and Nichols ("Freese"); Graham Associates, Inc.; Halff Associates, Inc. ("Halff"); HDR Engineering, Inc. ("HDR"); HNTB Corporations ("HNTB"); Jacobs Engineering Group Inc.; Kimley-Horn and Associates, Inc.; LJA Engineering ("LJA"); Lockwood, Andrews & Newnam, Inc.; McKissack & McKissack ("McKissack"); Michael Baker Interntaional; Multatech; Pacheco Koch Consulting Engineers, Inc.; Stream Water Group, Inc. ("Stream"); and TranSystems Corporation Consultants.

Act in certain circumstances). We have received comments from BGE, Cobb, Freese, Halff, HDR, HNTB, LJA, McKissack, and Stream. We have reviewed the submitted arguments and 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 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 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 the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note Cobb and HNTB argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the city has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the request for information.

Freese, HNTB, and LJA raise section 552.104 of the Government Code for portions of its information. Section 552.104 excepts from disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address Freese's, HNTB's, or LJA's arguments under section 552.104.

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

- (a) 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 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). The third parties at issue raise section 552.1101(a) of the Government Code for their portion of the submitted information, asserting disclosure of the information at issue would reveal an individual approach to work, organizational structure, staffing, internal operations, processes or discounts, pricing methodology, cost data and other pricing information that will be used in future solicitations.<sup>3</sup> Upon review, we find the third parties have demonstrated the applicability of section 552.1101(a) to the information at issue. Accordingly, the city must withhold the information indicated under section 552.1101(a) of the Government Code; however, to the extent the customer information is made available to the public by the relevant third parties, including but not limited to on their website or social media accounts, it may not be withheld under section 552.1101(a) of the Government Code.<sup>4</sup> 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

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<sup>3</sup> Although McKissack and Stream do not cite to section 552.1101 of the Government Code in their briefs, we understand them to raise this exception based on their arguments.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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/mo

Ref: ID# 958622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)