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ATTORNEY GENERAL OF TEXAS

July 14, 2022

Ms. Diana Boone
Records Analyst
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2022-20312

Dear Ms. Boone:

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# 957361 (Reference# W010177-042722).

The City of North Richland Hills (the "city") received a request for information pertaining to RFQ# 21-017. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 National Service Research ("NSR"). We have considered the submitted arguments and reviewed the submitted information.

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

NSR raises section 552.110 of the Government Code for some of its information at issue. Section 552.110(b) 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). Section 552.110(c) of the Government Code states:

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). NSR argues some of its information consists of commercial or financial information subject to section 552.110. Upon review, we find NSR 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; however, to the extent NSR’s customer information is publicly available on its company’s website or social media, we find the city may not withhold this information under section 552.110 of the Government Code.¹ Additionally, we find NSR has failed to provide specific factual evidence demonstrating any portion of 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 of the Government Code.

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

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

- (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 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;

(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). NSR asserts disclosure of some of its remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing methodology and give advantage to a competitor. Upon review, we find NSR has failed to provide the specific factual evidence necessary to withhold any of the remaining information at issue under section 552.1101(a), and the city may not withhold it on that basis.

In summary, the city must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent NSR's customer information is publicly available on its company's website or social media, we find the city may not withhold this information 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jxd

Ref: ID# 957361

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)