



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Mr. Eric L. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 7701-0368

OR2022-28887

Dear Mr. Nguyen:

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# 973768 (City Ref. No. W073623).

The City of Houston (the "city") received a request for information pertaining to nine specified bids. You state the city has no information responsive to a portion of the request.<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 their right to submit arguments to this office as to why the submitted information should not be released.<sup>3</sup>

---

<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> You inform us the notified third parties are: Acuity Specialty Products, Inc.; Amerisochi, Inc.; Atomac LTD; BestRR Professional Services; BG Chemical LP ("BG Chemical"); Biosystems, Inc.; Cerberus Enterprises; Competitive Choice, Inc.; Decoulant, Inc.; Devon Sankar Pivotal Industries; Dilip Kumar Soni d/b/a Globe Office Products; Ferullo Construction & Supplies; The Fixits Group LLC; HMT Services Corporation; Homeland Industrial Supply, Inc.; IPAX Atlantic-Michigan LLC; Jonadel Resources LLC; Lotus USA, Inc.; Momar, Inc.; P3 Imaging Solutions LLC; Planet Cellular, Inc.; Province Holdings LLC; Rhomar Industries, Inc.; Sneed Construction Company; STS Global USA Corp.; Suncoast Research Labs, Inc.; Superior Industrial Products Corp.; Texas Rea LLC; and Wesco Distribution, Inc.

<sup>3</sup> We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See Gov't Code* § 552.301(b), (e). Nonetheless, because third-party interests are at

*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 BG Chemical. We have reviewed the submitted information and 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 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 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 the remaining third parties may have in the information.

BG Chemical raises section 552.104 of the Government Code for a portion 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." Gov't Code § 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 BG Chemical's arguments under section 552.104. 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

---

stake, we will consider whether the submitted information must be withheld under the Act based on third-party interests. *See id.* §§ 552.007, .302, .352.

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,

Nick Ybarra  
Assistant Attorney General  
Open Records Division

NY/pt

Ref: ID# 973768

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
w/o (enclosures)