



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Ms. Katinka Howell
Assistant City Attorney
City of San Antonio
9800 Airport Boulevard
San Antonio, Texas 78216-9990

OR2022-33419

Dear Ms. Howell:

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# 980285 (COSA File No. W464506-080822).

The City of San Antonio (the "city") received a request for information pertaining to a specified request for proposals. Although you take no position regarding whether the requested information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Atkins North America, Inc.; Burns & McDonnell Engineering Co., Inc.; EXP U.S. Services, Inc.; and Kimley-Horn and Associates, Inc. Accordingly, you state the city notified the interested 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 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 any third party explaining why the information at issue should not be released. Thus, we have no basis to conclude any third party has a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold any portion of the requested information on the basis of any proprietary interest any third party may have in it.

We must address the city's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). As of the date of this letter, the city has not submitted for our review a copy or representative sample of the information requested. Consequently, we find the city has failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because the city has not submitted the requested information for our review, we have no basis for finding any of the information at issue excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 980285

c: Requestor