



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2022

Ms. Patricia Borschow
Assistant General Counsel
El Paso Water Utilities – Public Service Board
P.O. Box 511
El Paso, Texas 79961-0511

OR2022-39883

Dear Ms. Borschow:

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# 992239 (EPW Internal File # EP09-37).

The El Paso Utilities – Public Service Board (the “board”) received a request for a specified invoice. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.1101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Thatcher Company of Arizona, Inc. (“Thatcher”). Accordingly, you state, and provide documentation showing, you notified Thatcher of the request for information and of its 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 considered the exceptions you claim and reviewed the submitted information.

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 Thatcher explaining why their information should not be released. Therefore, we have no basis to conclude Thatcher 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 board may not withhold

any of the information at issue on the basis of any proprietary interest Thatcher may have in it.

We note you raise section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although you assert the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. In addition, although you raise section 552.1101 of the Government Code for the information at issue, this section protects only the interests of a vendor, contractor, potential vendor, or potential contractor that has provided information to a governmental body, not those of the governmental body itself. *See id.* § 552.1101(c). Thus, we do not address your arguments under sections 552.110 or 552.1101 of the Government Code. The board 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 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# 992239

Enc. Submitted documents

c: Requestor
(w/o enclosures)