



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2014

Ms. Katinka Howell
Assistant City Attorney
City of San Antonio Aviation Department
9800 Airport Boulevard, MO63
San Antonio, Texas 78216-4897

OR2014-13922

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# 532358 (COSA File Nos. WO27977-051714 and WO28484-060314).

The City of San Antonio (the "city") received two requests from different requestors for the proposals submitted to the city in response to a specified request for proposals. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified Atkins International, L.L.C., d/b/a The Atkins Group ("Atkins"), BQR Advertising and Public Relations, Inc. ("BQR"), KGBTexas Marketing/Public Relations, Inc. d/b/a KGBTexas Communication ("KGBTexas"), and Mighty Studio Group, L.L.C. ("Mighty") of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Atkins and BQR. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the first requestor has excluded the following information from her request: (1) tax identification numbers; (2) insurance policy numbers or coverage; (3) financial statements; and (4) credit reports. Therefore, this information is not responsive to the first request. The second requestor has excluded the following information from her request: (1) company financial information; (2) client lists; (3) tax identification numbers and social security information; (4) insurance certificates and policy numbers; (5) proposal bond and bond numbers; and (6) discretionary contracts disclosure information. Therefore, this

information is not responsive to the second request. Our ruling does not address the public availability of non-responsive information, and the city is not required to release information that is not responsive.

Next, we note the proposals submitted by Atkins, BQR, and Mighty were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-12352 (2011). In that ruling, we concluded the city must withhold certain information in Atkins's proposal under section 552.110(b) of the Government Code and release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed with respect to the proposals of Atkins and Mighty. Accordingly, the city must continue to rely on Open Records Letter No. 2011-12352 as a previous determination and withhold or release Atkins's and Mighty's information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, in Open Records Letter No. 2011-12352, the city notified BQR pursuant to section 552.305 when the city received the previous request for information, and the city informed this office BQR did not object to the release of its information. Accordingly, in our previous ruling, we ruled the city must release BQR's information. However, BQR now claims some of its information is excepted from disclosure under section 552.110 of the Government Code. Because the proprietary interests of a third party are at stake, we will consider BQR's claims under section 552.110. We will also consider whether any of the remaining information not subject to Open Records Letter No. 2011-12352 is excepted under the Act.

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 letter, we have not received arguments from KGBTexas. Thus, KGBTexas has not demonstrated it has a protected proprietary interest in any of 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 the submitted information on the basis of any proprietary interest KGBTexas might have in it.

BQR raises section 552.110(b) of the Government Code for its information. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial

¹As our ruling is dispositive, we need not address Atkins's arguments against disclosure of this information.

competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also* ORD 661 at 5.

As mentioned above, BQR’s proposal was subject to Open Records Letter No. 2011-12352. In the prior ruling, the city notified BQR of the request for information pursuant to section 552.305 of the Government Code. BQR did not object to the release of its proposal. Since the issuance of the previous ruling on August 25, 2011, BQR has not disputed this office’s conclusion regarding the release of the information in its proposal, and we presume that, in accordance with that ruling, the city has released the proposal. In this regard, we find BQR has not taken necessary measures to protect its proposal in order for this office to conclude that any portion of that information now qualifies as commercial or financial information, the release of which would cause BQR substantial competitive harm. *See* Gov’t Code § 552.110, RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* ORDs 661, 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). Accordingly, we conclude the city may not withhold any information in BQR’s proposal under section 552.110 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2011-12352 as a previous determination and withhold or release the information at issue in accordance with that ruling. The city need not release information that is not responsive to the request. The remaining information must be released.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 532358

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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