



January 30, 2015

Ms. Sara Hoglund, CPPB
Contracts Manager
County of Collin
Office of the Purchasing Agent
2300 Bloomdale Road, Suite 3160
McKinney, Texas 75071

OR2015-01909

Dear Ms. Hoglund:

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# 553704.

Collin County (the "county") received a request for the contract, bids, and bid tabulations pertaining to Solicitation Number 2014-206. The county does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the county states it notified JP Morgan Bank, N.A. ("JP Morgan") of the county's receipt of the request for information and of JP Morgan's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 JP Morgan objecting to the release of some of the information at issue under sections 552.104 and 552.110 of the Government Code. We have reviewed the submitted arguments and information.

Initially, we note the county did not submit the requested contract or bid tabulation information. We assume, to the extent this information existed when the county received the request for information, the county has released it to the requestor. If not, then the county must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

JP Morgan argues some of its information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure information that, if

released, would give an advantage to a competitor or bidder. Gov't Code § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). The county did not assert section 552.104. Therefore, the county may not withhold any of the information at issue pursuant to that section. *See* ORD 592 (governmental body may waive statutory predecessor to section 552.104).

JP Morgan also asserts some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial 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[.]” Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm). Upon review, we find JP Morgan has established the release of its customer information and the information we have marked under section 552.110(b) would cause it substantial competitive injury. Nevertheless, to the extent JP Morgan has published any of the customer information at issue on its website, this information is not confidential under section 552.110. Accordingly, the county must withhold JP Morgan's customer information in the submitted documents under section 552.110(b), provided JP Morgan has not published the information on its website. The county must also withhold the information we have marked under section 552.110(b). However, we find JP Morgan has failed to establish release of any of the remaining information, including any customer information published on JP Morgan's website, would cause it substantial competitive injury. *See id.* § 552.110(b). Therefore, the county may not withhold any of the remaining information on that ground.

We note the submitted information contains bank routing numbers. Section 552.136(b) provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov't Code § 552.136(b). Therefore, the county must withhold the bank routing numbers in the submitted documents under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

To conclude, the county must withhold JP Morgan's customer information in the submitted documents under section 552.110(b) of the Government Code, provided JP Morgan has not published the information on its website. The county must also withhold the information we have marked under section 552.110(b). The county must withhold the bank routing numbers in the submitted documents under section 552.136 of the Government Code. The county must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 553704

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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