



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Mr. William Schultz
Assistant District Attorney
Civil Division
County of Denton
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2015-12876

Dear Mr. Schultz:

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# 569039.

The Denton County Purchasing Department (the "department") received a request for a copy of the bid of ADC, LTD NM ("ADC") submitted in response to RFP No. 01-15-2280. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code.¹ Further, you state release of the submitted information may implicate the proprietary interests of ADC. Accordingly, you state, and provide documentation showing, you notified ADC 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 exception you claim and reviewed the submitted information.

¹Although you also raise sections 552.107 and 552.111 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claims sections 552.107 and 552.111 apply to the requested information. *See* Gov't Code §§ 552.301, .302.

The department asserts the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. Therefore, we do not address the department's argument under section 552.110.

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 ADC explaining why the submitted information should not be released. Therefore, we have no basis to conclude ADC has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest ADC may have in the information. As no further exceptions to disclosure have been raised, the department 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 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 569039

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jerome Cordova
Mr. Gilbert Archuleta
ADC LTD NM
909 Virginia Street, NE, Suite 104
Albuquerque, New Mexico 87108
(w/o enclosures)



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Ms. Kristen N. Lee
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2015-12877

Dear Ms. Lee:

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# 569122 (HCSO File No. 15PIA0147).

The Harris County Institute for Forensic Sciences (the "county") received a request for a specified autopsy report.¹ You claim the requested information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code. We have considered the exceptions you claim.

We must address the procedural obligations of the county under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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 Gov't Code* § 552.301(e). In this instance, the county states it received the request for information on April 14, 2015. As of the date of this letter, the county has not submitted for our review written comments stating the reasons why the

¹As you did not provide a copy of the written request letter to this office, we base our description of the request on your briefing.

stated exceptions apply, the written request for information, or a copy or representative sample of the information requested. Consequently, we find the county failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the county has failed to comply with the procedural requirements of the Act, the county has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because you have not submitted a copy or representative sample of the specific information requested to this office for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If the county believes the information is confidential and may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 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 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 569122

c: Requestor