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ATTORNEY GENERAL OF TEXAS

September 4, 2015

Mr. Daniel L. Walter
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OR2015-18586

Dear Mr. Walter:

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# 578318.

La Salle County (the "county"), which you represent, received a request for information relating to a specified road, including (1) a specified contract between the county and a third party for engineering work; (2) all contracts awarded for the repair or engineering of the specified road; (3) the repair schedule; (4) bank account information containing settlement funds designated for the specified road; (5) a certificate of substantial completion; and (6) the name and contact information of the project engineer for the repairs the specified road. You state you do not have some of the information responsive to the request.¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.136 of the Government Code.² You also state release of this information may

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although you also raise section 552.110 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301(e)(1)(A), .302.

implicate the proprietary interest of Civil Engineering Consultants and S&B Infrastructure, Ltd. Accordingly, you state you notified these parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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.

You state the county sought clarification of categories 2 and 3 of the request for information, and the county has not yet received clarification on these portions of the request. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to category 2 and have made arguments against disclosure of this information. Thus, we assume the county has made a good-faith effort to relate this request to information the county holds, and we will address the applicability of your arguments to the information. However, the county has no obligation at this time to release any additional responsive information for which the county has not received clarification. If the requestor responds to the request for clarification, the county must seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

You also note a portion of the request asks the county to answer a question. The Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, as stated above, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. ORD 561 at 8-9. Therefore, while the county is not required to create information in response to the question at issue, documents from which this information may be derived would be responsive to this request. In this instance, you have submitted information for our review. Therefore, we assume the county has made a good-faith effort to locate any information responsive to the question at issue, and we will address your claimed exceptions for the information at issue.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of information in contracts and an account relating to the receipt or expenditure of funds by the county which is subject to section 552.022. The county must release the submitted information pursuant to section 552.022(a)(3) unless the information is made confidential under the Act or other law. You seek to withhold the submitted information under section 552.103 of the Government Code. However, this section is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, the county also claims section 552.104 of the Government Code for Exhibits K and L. Information subject to section 552.022 may be withheld under section 552.104. *See Gov't Code § 552.104(b)* (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). Further, the county claims section 552.136 of the Government Code for portions of Exhibit M. Section 552.136 of the Government Code makes information confidential under the Act. Accordingly, we will consider your arguments under sections 552.104 and 552.136 for the submitted information.

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) of the Government Code 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 of the notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the parties have protected proprietary interests 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, 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 county may not withhold the submitted information on the basis of any proprietary interest a notified party may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015). You represent the information pertains to a competitive bidding situation. In addition, you state disclosure of the information at issue would reveal detailed contractual fee terms for each phase of engineering and construction and give other construction companies an advantage in the bidding and subsequent negotiation process, which would be detrimental to the county’s ability to negotiate future contracts. Further, you assert, due to the county’s rural location, there is not a wide variety of companies bidding on contracts with the county. Additionally, you inform us the county is currently planning new projects to repair, build, and improve its roads due to heavy oil field traffic. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold Exhibit K and Exhibit L under section 552.104(a).

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the county must withhold the bank account numbers we have marked within Exhibit M under section 552.136 of the Government Code. However, the county has failed to demonstrate the remaining information in Exhibit M consists of an access device number for section 552.136 purposes. Accordingly, the county may not withhold the remaining information within Exhibit M under section 552.136.

In summary, the county may withhold Exhibit K and Exhibit L under section 552.104 of the Government Code. The county must withhold the bank account numbers we have marked within Exhibit M under section 552.136 of the Government Code. 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 578318

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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