



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2015

Mr. Richard A. McCracken
Assistant City Attorney
City of Fort Worth
1000 Thockmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-20692

Dear Mr. McCracken:

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# 581516 (PIR No. W044188).

The City of Fort Worth (the "city") received a request for information pertaining to a specified request for proposals.¹ Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of A-Check Global Headquarters ("A-Check"); Amerisearch Background Alliance; Employer's Investigative Services; Inquiries, Inc.; Kelmar Global ("Kelmar"); MCK Testing and Screening d/b/a Conspire!; and Quick Search. Accordingly, you state, and provide documentation showing, you notified these third 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 received arguments from Kelmar. We have considered the submitted arguments and reviewed the submitted information.

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

Initially, the city informs us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-15041 (2015). In Open Records Letter No. 2015-15041, we determined, 1) to the extent the customer information is not publicly available on the company's website, the city must withhold A-Check's marked customer information under section 552.110(a) of the Government Code and 2) the city must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2015-15041 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001)(discussing criteria for first type of previous determination).

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 only received comments from Kelmar explaining why the remaining information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in the remaining 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 city may not withhold the remaining information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.110(b) of the Government Code protects "[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). 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.*; *see also* ORD 661 at 5.

Kelmar asserts some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Upon review, we conclude Kelmar has established the release of its client references would cause the company substantial competitive injury. Accordingly, to the extent Kelmar's client reference information within the submitted information is not publicly available on the company's website, the city must withhold the client reference information at issue under section 552.110(b). Additionally, we find Kelmar has established the release of some of its remaining information, which we have marked, would cause the

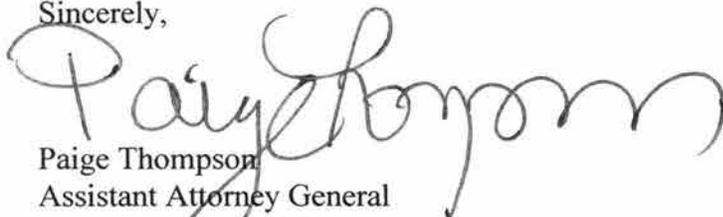
company substantial competitive injury. Therefore, the city must withhold the information we marked under section 552.110(b) of the Government Code.²

In summary, the city must continue to rely on Open Records Letter No. 2015-15041 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent Kelmar's client reference information within the submitted information is not publicly available on the company's website, the city must withhold the client reference information at issue under section 552.110(b). The city must withhold the information we marked under section 552.110(b) of the Government Code. The city must release the remaining 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 581516

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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