



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2015

Mr. Ryan Mitchell
Assistant City Attorney
City of Arlington
Office of the City Attorney
P.O. Box 90231
Arlington, Texas 76004-3231

OR2015-21991

Dear Mr. Mitchell:

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# 583826 (ORR# W022799-080315).

The City of Arlington (the "city") received a request for "2015 Annual RFQ submittal packages, for review by the [c]ity" for third parties selected by the city to do work in 2015-2016. The city does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the city states, and provides documentation showing, it notified interested third parties, including Stream Water Group, Inc. ("SWG"), of the city's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released.¹ *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). In correspondence to this office, we understand SWG to object to the release of its information

¹The following are the other third parties that the city notified of the request for information: AECOM; Dunaway Associates; Elder Engineering; Freese & Nichols, Inc.; Halff Associates; Hellmuth, Obata & Kassabaum; Kimley Horn; Klotz Associates; Lee Engineering; Pacheco Koch Consulting Engineers, Inc.; Savant Group; Schrickel Rollins and Associates; Teague, Nall & Perkins; TranSystems; and Wier & Associates.

under section 552.104 of the Government Code. We have considered the claimed exception and reviewed 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) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, only SWG has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of any of the remaining third parties, and the city may not withhold any portion of it on that basis. *See* 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 that information is trade secret), 542 at 3.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). 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." *Id.* at *9. SWG states it has competitors. In addition, SWG states release of its statement of qualifications will put SWG at a disadvantage for any future Request for Qualifications. After review of the information at issue and consideration of the arguments, we find SWG has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold SWG's statement of qualifications under section 552.104(a) of the Government Code.

The city informs us 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 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. Thus, the city must release the remaining information, but may only withhold any copyrighted information in accordance with copyright law.

To conclude, the city may withhold SWG's statement of qualifications under section 552.104(a) of the Government Code. The city must release the remaining information, but may only withhold 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# 583826

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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