



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2015

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-22815

Dear Mr. Garcia:

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# 585252 (McAllen PIR W020157-081015).

The City of McAllen (the "city") received a request for the bids for a specified request for proposals. You state you have release some information to the requestor. Although the city takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Reynosa Casa de Cambio, Inc. ("Reynosa"); San Isidro Multi-Services ("San Isidro"); and Texas G&S Investments, Inc. ("G&S"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the companies' rights 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 received comments from San Isidro. We have reviewed the submitted information and the submitted arguments.

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 either Reynosa or G&S explaining why the submitted information should not be released. Therefore, we have no basis to conclude either of the remaining third parties 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

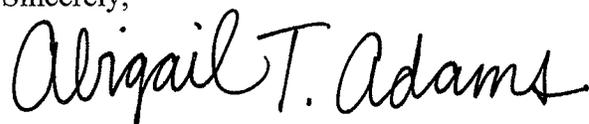
(1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

San Isidro claims its submitted information is excepted under section 552.104 of the Government Code. Section 552.104(a) excepts 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*, 466 S.W.3d 831 (Tex. 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 841. San Isidro states it has competitors. In addition, San Isidro states disclosure of its information could put the company at a substantial competitive disadvantage, because a competitor could examine San Isidro’s profit margin and deduce a potential bid. Then, the competitor could underbid San Isidro for competitive bids. After review of the information at issue and consideration of the arguments, we find San Isidro has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold San Isidro’s information under section 552.104(a) of the Government Code.¹ As no further exceptions to disclosure have been raised, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

¹As our ruling is dispositive, we need not address San Isidro’s remaining argument against disclosure of the information at issue.

Ref: ID# 585252

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mark Montalvo
For San Isidro Multi-Services
Montalvo Law
900 North Main Street
McAllen, Texas 78501
(w/o enclosures)

Mr. William Cantu
Texas G&S Investments, Inc.
4403 West Military Highway, Suite 701
McAllen, Texas 78503
(w/o enclosures)

Mr. Xavier E. Guerra
Reynosa Casa de Cambio, Inc.
521 South International Boulevard
Hidalgo, Texas 78557
(w/o enclosures)