



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2015

Mr. Robert Davis
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-22960

Dear Mr. Davis:

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# 585610.

The City of Austin (the "city") received a request for a copy of the contract awarded for a specified request for proposals. You state you will 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 TEGSCO, L.L.C. ("TEGSCO"). Accordingly, you state, and provide documentation showing, you notified TEGSCO of the request for information and of the company's 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 received comments from TEGSCO. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from the requestor.¹ *See* Gov't Code § 552.304 (permitting interested third party

¹The requestor asserts, and we agree, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because third party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.007, .302, .352.

to submit to attorney general reasons why requested information should or should not be released).

TEGSCO claims its financial information in Document 3 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.” *Id.* § 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. TEGSCO states it has competitors. In addition, TEGSCO states release of its financial information could be exploited by competitors to give these competitors a significant and unfair advantage in bidding for future municipal contracts. After review of the information at issue and consideration of the arguments, we find TEGSCO has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Document 3 under section 552.104(a) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country.³ Gov’t Code § 552.130(a)(1)-(2). The remaining information contains motor vehicle record information, which we have marked. However, we are unable to determine whether the marked information constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle record information created as a sample for purposes of responding to the request for proposals. Thus, to the extent the information we have marked constitutes actual motor vehicle record information, the city must withhold the information we marked under section 552.130 of the Government Code. To the extent the information we have marked consists of fictitious motor vehicle record information, it may not be withheld under section 552.130 of the Government Code.

We note some of the remaining information 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.

²As our ruling is dispositive, we do not discuss TEGSCO’s remaining argument against disclosure of this information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city may withhold Document 3 under section 552.104(a) of the Government Code. To the extent the information we have marked constitutes actual motor vehicle record information, the city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information; however, the city may only release information subject to copyright 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 585610

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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