



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Ms. Kristen N. Lee
Assistant County Attorney
Harris County Attorney's Office
1010 Congress, 15th Floor
Houston, Texas 77002

OR2015-26096

Dear Ms. Lee:

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# 590456.

The Harris County Purchasing Agent's Office (the "purchasing agent's office") received a request for all bids submitted for two specified requests for proposals. You state you do not have information responsive to one request for proposal.¹ Although you take 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 Roy Jorgenson Associates, Inc. ("Jorgenson"). Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its 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

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).

explain applicability of exception in the Act in certain circumstances). We have received comments from Jorgenson. We have reviewed the submitted information and arguments.²

Jorgenson argues its information is confidential pursuant to section 262.030(c) of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 262.030(c) of the Local Government Code provides a competitive proposal procedure for the purchase of insurance, high technology items, or certain enumerated special services by a county, and states, in pertinent part:

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

Local Gov’t Code § 262.030(c). In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of section 262.030(c) does not expressly make bid proposals confidential. Accordingly, we determine the requested information is not confidential pursuant to section 262.030(c). Thus, the purchasing agent’s office may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 262.030 of the Local Government Code. As no other exceptions to disclosure have been raised, the submitted information must be released.

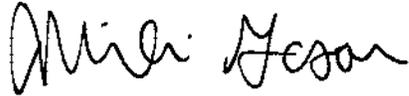
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²We note the purchasing agent’s office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov’t Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider the arguments against disclosure of the information at issue.

[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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 590456

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Douglas Selby
Roy Jorgensen Associates, Inc.
3735 Buckeystown Pike
Buckeystown, Maryland 21717
(w/o enclosures)