



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2016

Ms. Lisa Harvell
Program Coordinator
Team Leader & Interior Designer
Architecture Division
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

Ms. Christine Huber
Administrative Assistant
Architecture Division
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

OR2016-03106

Dear Ms. Harvell and Ms. Huber:

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# 599357.

The Texas Historical Commission (the "commission") received a request for portions of the applications submitted to the commission for the Texas Historical Rehabilitation Tax Credit. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of eleven third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 one of the third parties (the “company”). We have considered the submitted arguments and reviewed the submitted information.

Initially, the company asserts some of its information is not responsive to the present request for information. However, the information at issue is contained in Part B and/or Part C of the company’s application for the Texas Historical Rehabilitation Tax Credit. Part B and Part C were specifically included in the request for information. Thus, we find the information at issue is responsive to the request for information.

Next, we note 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 the company explaining why its information should not be released. Therefore, we have no basis to conclude any 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, 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 commission may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in it.

The company asserts some of its information is excepted from disclosure under section 552.104(a) of the Government Code. Section 552.104(a) of the Government Code 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, 839 (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. The company states it has competitors. In addition, the company states release of the information at issue would give advantage to competitors by revealing information regarding the company’s project costs. After review of the information at issue and consideration of the arguments, we find the company has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information the company has indicated under section 552.104(a) of the Government Code.¹ As no further exceptions to disclosure are raised, the remaining information must be released.

¹As our ruling is dispositive, we do not address the other arguments to withhold this 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 599357

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)