



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2016

Mr. Brian J. Knowles  
Counsel for the City of Hutto  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2016-06960

Dear Mr. Knowles:

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# 603395.

The City of Hutto (the "city"), which you represent, received two requests from different requestors pertaining to a specified RFP. The city states it is releasing some information. Although the city takes no position as to whether the submitted information is excepted under the Act, the city informs us release of this information may implicate the proprietary interests of Waste Management of Texas, Inc.; Central Waste and Recycling, Inc. ("CWR"); Texas Disposal Systems; Republic Services of Austin; Progressive Waste Solutions of TX, Inc.; Al Clawson Disposal, Inc.; and Central Texas Refuse, Inc. ("CTR"). Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 CWR and CTR. We have considered the submitted arguments 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) of the Government Code 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 CWR and CTR explaining why the submitted 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, 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 any of the remaining third parties may have in the information.

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 (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. CTR and CWR state they have competitors. In addition, CTR states release of its information would give an unfair advantage to a competitor and interfere with CTR’s interests. Further, CWR states release of the unique information in its bid, “such as how [CWR] talks about its employees, services, pricing models, past history, references, partnerships and even other ‘extra’ services being offered,” would allow competitors to tailor their future bids to attack perceived weaknesses in the CWR bid. After review of the information at issue and consideration of the arguments, we find CTR and CWR have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup>

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>2</sup> Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Further, this office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Therefore, the city must withhold the bank account and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup>The 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 the information we have marked under section 552.104(a) of the Government Code. The city must withhold the bank account and insurance policy numbers in the remaining information under section 552.136 of the Government Code. 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 603395

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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