



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2016

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

OR2016-14034A

Dear Mr. Davis:

This office issued Open Records Letter No. 2016-14034 (2016) on June 21, 2016. Since that date, the City of Austin (the "city") informs us that, at the time of its request for a decision, the third party at issue had not received notice of the request. Thus, we must address the interests of the third party whose information is at issue. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on June 21, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 627153.

The city received a request for a specified contract. Although the city takes no position with respect to the public availability of the submitted information, the city states the request implicates the proprietary interests of TEGSCO, LLC ("TEGSCO"). Accordingly, you state, and provide documentation showing, you notified TEGSCO 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.¹ *See id.* § 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).

¹We note, and you acknowledge, 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 section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness and 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.

We have received comments from TEGSCO. We have considered the submitted arguments and reviewed the submitted information.

TEGSCO claims its Consolidated Financial Statement 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. 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 TEGSCO’s Consolidated Financial Statement under section 552.104(a) of the Government Code.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.³ See Gov’t Code § 552.130. We note the submitted information contains motor vehicle record information. However, we are unable to determine whether the information at issue constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle information created as a sample for purposes of responding to the request for proposals at issue. Thus, to the extent the vehicle identification numbers and license plate information in the submitted information constitute actual motor vehicle record information, the city must withhold such information under section 552.130 of the Government Code. To the extent the vehicle identification numbers and license plate information consist of fictitious motor vehicle record information, they may not be withheld under section 552.130.

In summary, the city may withhold TEGSCO’s Consolidated Financial Statement under section 552.104(a) of the Government Code. To the extent the vehicle identification numbers and license plate information in the submitted information constitute actual motor vehicle record information, the city must withhold such information under section 552.130 of the Government Code. The city must release the remaining information.

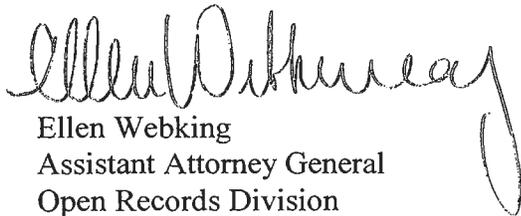
²As our ruling is dispositive, we do not discuss TEGSCO’s remaining argument against disclosure of this information.

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).

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 627153

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)