



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. Jennifer Watson
Officer for Public Information or Designee
Houston Housing Authority
2640 Fountain View Drive
Houston, Texas 77057

OR2016-14103A

Dear Ms. Watson:

This office issued Open Records Letter No. 2016-14103 (2016) on June 21, 2016. Since that time, we have received new information that affects the facts on which this ruling was based. 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 the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 625689.

The Houston Housing Authority (the "authority") received two requests from different requestors for information pertaining to a specified request for qualifications. You state you will release some information. 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 Ad Astra, Inc. ("Ad Astra"); KTL Communications LLC; Language Services Associates, Inc. ("LSA"); MasterWord Services, Inc. (MasterWord"); Telelanguage, Inc.; and TransPerfect. Accordingly, you state, and provide documentation showing, you notified these third parties of the requests for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *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).

We have received comments from Ad Astra, LSA, MasterWord, and TransPerfect. We have considered the submitted arguments and reviewed the submitted information.

Initially, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); 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 authority may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, LSA and MasterWord argue against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the authority has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the authority submitted as responsive to the requests for information.

Section 552.104(a) of the Government Code exempts 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. Ad Astra, LSA, MasterWord, and TransPerfect indicate they have competitors. In addition, Ad Astra states release of its information would provide competitors "a competitive advantage in an extremely competitive marketplace." LSA states release of its information "would provide LSA's competitors with an unfair advantage in the marketplace." MasterWord claims release of the information it marked could be used by competitors to "underbid MasterWord's pricing, take MasterWord's business processes and software as their own without the cost and effort of developing them, train their interpreters as MasterWord does, and pursue MasterWord's interpreters and customers without doing the hard work of finding them first." Likewise, TransPerfect asserts release of its information would provide a competitor "an advantage on any future competitions." After review of the information at issue and consideration of the arguments, we find Ad Astra, LSA, MasterWord, and TransPerfect have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the

bids submitted by Ad Astra, LSA, and TransPerfect and the information MasterWord marked under section 552.104(a) of the Government Code.¹

Section 552.136(b) 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, the remaining information is not subject to section 552.136 and may not be withheld on that basis.

We understand MasterWord to raise section 552.147 of the Government Code, which provides, “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Upon review, we find none of the remaining information consists of a social security number of a living individual. Accordingly, the authority may not withhold any of the remaining information under section 552.147 of the Government Code.

We note some of the remaining information appears to 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.

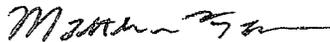
In summary, the authority may withhold the bids submitted by Ad Astra, LSA, and TransPerfect and the information MasterWord marked under section 552.104(a) of the Government Code. The authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The authority must release the remaining information; however, any information subject to copyright may only be released 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.

¹As we are able to make this determination, we do not address the other arguments to withhold this information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 625689

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

6 Third Parties
(w/o enclosures)