



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 10, 2016

Mr. Matthew C. G. Boyle  
Counsel for the City of Grapevine  
Boyle & Lowry, L.L.P.  
4201 Wingren Drive, Suite 108  
Irving, Texas 75062-2763

OR2016-18078

Dear Mr. Boyle:

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# 622285.

The City of Grapevine (the "city"), which you represent, received a request for information pertaining to a specified permit. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.110 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of Outfront Media, L.L.C. ("Outfront"). Accordingly, you state you notified Outfront of the request for information and of its 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 counsel for Outfront. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with sections 552.107 and 552.110 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you raise sections 552.104 and 552.111 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

Initially, we note the requestor contends the city failed to comply with section 552.301 of the Government Code by failing to either release the responsive documents or request a ruling from this office for a previous request dated September 23, 2015. *Id.* § 552.301. The requestor contends the previous request encompasses “essentially the same documentation” as the instant request. Thus, the requestor states, pursuant to section 552.302, the city may not withhold the information submitted in response to the present request. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 (1977). We note, a portion of the submitted information is dated prior to the date the city received the September 23, 2015, request. However, regardless of whether the city failed to comply with section 552.301 of the Government Code in regard to this information, the city argues section 552.110 of the Government Code and third party interests. Section 552.110 and the interests of a third party, such as Outfront, can provide compelling reasons to overcome the presumption of openness. Additionally, we note the remaining submitted information was created after the date of the September 23, 2015, request. Therefore, this information was not responsive to the previous request, and the city did not fail to comply with section 552.301 of the Government Code in regard to the prior request. Accordingly, we will consider the submitted arguments against disclosure of the submitted information.

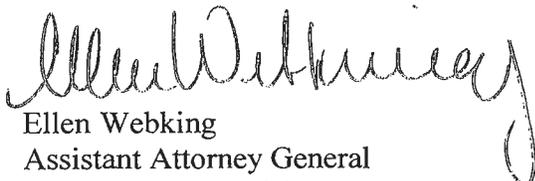
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as

an example of an exception that involves a third party's property interest, 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. Outfront indicates it has competitors. In addition, Outfront asserts release of its information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Outfront has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

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,

  
Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 622285

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.