



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Ms. Bertha A. Ontiveros
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2010-02218

Dear Ms. Ontiveros:

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# 370668.

The City of El Paso (the "city") received a request for the winning proposal related to a specified request for proposals. You state some information has been released. You indicate the submitted proposal may be excepted under sections 552.101, 552.104, and 552.110 of the Government Code, but take no position as to whether this information is excepted under those sections. You state and submit documentation showing you notified The Active Network, Inc. ("Active") of the request for information and of Active's right to submit arguments to this office as to why the submitted information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

We note that 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 requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Active has not submitted comments to this office regarding how the release of its submitted information will affect its proprietary interests. Thus, we have no basis to conclude that the release of any portion of

Active's information would implicate its proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest Active may have in the information. As no arguments have been made against the disclosure of the submitted information, it must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 370668

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Sukh Sanghera
The Active Network, Inc.
10182 Telesis Court
San Diego, California 92121
(w/o enclosures)