



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2010

Mr. Larry Roberson
Assistant Criminal District Attorney
Civil Section
Bexar County District Attorney's Office
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2010-04783

Dear Mr. Roberson:

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# 375569.

Bexar County (the "county") received a request for statements of qualifications awarded by the county to specified project recipients, each awardee's submission, and information relating to the selection and grading/ranking of all proposals received by the county. You claim the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state the requested documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing the county notified CAS Consulting & Services, Inc. ("CAS"); Klotz Associates, Inc. ("Klotz"); LNV, Inc. ("LNV"); and Lockwood, Andrews & Newman, Inc. ("Lockwood") of the request for information and of their right to submit arguments to this office as to why the requested information 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 considered the exceptions you claim.

Initially, we must address the county's obligations under section 552.301 of the Government Code, which prescribes procedures a governmental body must follow in asking this office

to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office a copy of the specific information requested or representative samples, if the information is voluminous. Gov't Code § 552.301(e)(1)(D). You state the county received the present request on January 21, 2010. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the requested information. Consequently, we find the county failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that 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); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You assert the requested information is excepted from disclosure under section 552.104 of the Government Code. However, this section is discretionary in nature and serves only to protect a governmental body's interests. As such, it is waived by a government body's failure to comply with section 552.301. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 592 at 8 (1991) (statutory predecessor to section 552.104 subject to waiver). Thus, the requested information may not be withheld under section 552.104 of the Government Code. However, because section 552.110, as well as third party interests, can provide a compelling reason to withhold information, we will consider whether the requested information is excepted from disclosure under the Act.

Although the county argues that the requested information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the county's argument under section 552.110. We note 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 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 decision, this office has not received arguments from any of the interested third parties. Thus, none of the third parties have demonstrated that any of their information is proprietary for purposes of the Act. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any of the requested information

on the basis of any proprietary interest a third party may have in the information at issue. As you raise no other exceptions to disclosure, the requested information must be released.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 375569

c: Requestor
(w/o enclosures)