



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2010-10019

Dear Ms. Grace:

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# 385709.

The City of Austin (the "city") received a request for all proposals submitted for request for proposal CEA 0100- firefighter recruitment. You indicate the city released most of the requested information. Although the city takes no position with respect to the public availability of the submitted proposal, you state its release may implicate the proprietary interests of the Bernard Hodes Group ("BHG"). Accordingly, you state, and provide documentation showing, the city notified BHG of the city's receipt of the request for information and of the BHG's right to submit arguments to this office as to why its proposal should not be released to the requestor. *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 comments submitted by BHG and reviewed the submitted proposal.

Initially, you acknowledge, and we agree, the city failed to request a ruling within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). 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 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, 381-82 (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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. *See* Open Records Decision No. 150 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider BHG's arguments against disclosure of portions of the proposal.

Section 552.110(b) of the Government Code protects the proprietary interests of private parties with respect to "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

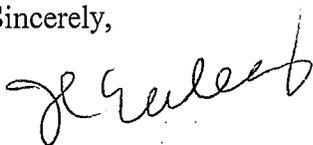
BHG seeks to withhold the pricing information in its proposal under section 552.110(b) of the Government Code. We note, however, the pricing information of a winning bidder, such as BHG, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). Accordingly, the city may not withhold the pricing information in BHG's proposal pursuant to section 552.110(b) of the Government Code. As BHG raises no further exceptions to disclosure, BHG's proposal 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 385709

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)