



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2011

Ms. Bridget Chapman  
Acting City Attorney  
City of Georgetown  
P. O. Box 406  
Georgetown, Texas 78627-0409

OR2011-16782

Dear Ms. Chapman:

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# 436119.

The City of Georgetown (the "city") received a request for five categories of information related to the city's current and future contracts for waste management. You state you have released information responsive to categories 1, 2, 3, and 5 of the request. Although you take no position on whether the remaining requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Texas Disposal Systems, Inc. ("TDS"). Accordingly, you have notified TDS of the request and of its right to submit arguments to this office as to why its 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 received comments from TDS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note TDS seeks to withhold information that the city has not submitted for our review. This ruling does not address information beyond what the city has submitted to us

for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the request for information. *See id.*

Next, we note TDS raises section 552.104 of the Government Code, which excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104. However, section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). As the city does not raise 552.104, we will not consider TDS's claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the city may not withhold any of the submitted information under section 552.104 of the Government Code.

TDS raises section 552.110(b) of the Government Code for its proposed pricing information. Section 552.110(b) protects “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). This section requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999).

TDS claims its proposed pricing information constitutes commercial information that, if released, would cause the company substantial competitive harm. After reviewing the submitted arguments and the information at issue, we find TDS has established release of its pricing information would cause the company substantial competitive injury. Therefore, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code.<sup>1</sup> As no further exceptions against disclosure are raised, the remaining 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](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

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<sup>1</sup>As our ruling is dispositive, we need not address TDS's remaining argument against disclosure of this information.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 436119

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Gary Newton  
General Counsel  
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P.O. Box 17126  
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(Third party w/o enclosures)