



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

Mr. Kipling D. Giles
Senior Counsel
Legal Services Division
City Public Service Board
P.O. Box 1771
San Antonio, Texas 78296

OR2012-12703

Dear Mr. Giles:

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# 461957.

The City Public Service Board ("CPS") received a request for any document that would show how much CPS paid for a specified survey conducted by J.D. Power & Associates ("JDPA"). Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of JDPA. Accordingly, you submit documentation showing CPS notified JDPA of the request for information and of its right to submit arguments to this office as to why the submitted 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 received comments from JDPA. We have considered the submitted arguments and reviewed the submitted information.

JDPA argues its submitted information is excepted from disclosure under section 552.104 of the Government Code. We note, however, that section 552.104 only protects the interests of a governmental body and does not protect the interests of a third party; therefore, we will

not consider JDPa's claim under section 552.104. *See* Open Records Decision No. 592 at 9 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive bidding situation, and not interests of private parties submitting information to government).

JDPa also argues its submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial 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 exception to disclosure 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. *Id.*; *see also* Open Record Decision 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find JDPa has made only conclusory allegations that release of the submitted information would result in substantial harm to its competitive positions and has provided no specific factual or evidentiary showing to support such allegations. *See* ORD 661; *see also* Open Record Decision 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Furthermore, 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* Dep't of Justice Guide to the Freedom of Information Act 344-45 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Therefore, CPS may not withhold any of JDPa's submitted information under section 552.110(b) of the Government Code. As no further exceptions to disclosure are raised, CPS must release the submitted information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 461957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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