



ATTORNEY GENERAL OF TEXAS  
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OR2012-18269A

Ms. Elaine Nicholson and Ms. Susana Carbajal:

This office issued Open Records Letter No. 2012-18269 (2012) on November 13, 2012. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 13, 2012. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

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# 477556.

The City of Austin (the "city") received two requests for a specified proposal and certain agreements. You state you have released some information to the requestors. Although you take no position on whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Cingular Wireless PCS,

LLC (“Cingular”), Concourse Communications Group, LLC (“Concourse”), and Dallas MTA, L.P. d/b/a Verizon Wireless (“Verizon”). Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 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 the circumstances). We have received comments from Concourse. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge the city did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision regarding the first request. *See Gov’t Code* § 552.301(a)-(b). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether the information at issue is excepted under the Act.

We note that an interested party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Cingular or Verizon. Thus, these third parties have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests Cingular or Verizon may have in the information.

Concourse asserts some of its information is excepted from public disclosure under section 552.104 of the Government Code, which excepts “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). This exception protects the competitive interests of governmental bodies such as the commission, not the proprietary interests of private parties such as Concourse. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, the city does not raise section 552.104 as an exception to disclosure. Therefore, the city may not withhold any of the submitted information under section 552.104 of the Government Code.

Concourse also claims section 552.110(b) of the Government Code, which 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* ORD 661 at 5. Upon review, we find Concourse has made only conclusory allegations that release of the submitted information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Further, this office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder, such as Concourse, is generally not excepted under section 552.110(b). *See* Open Records Decision Nos. 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 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, none of the submitted information may be withheld under section 552.110(b). As no further exceptions to disclosure have been raised, the submitted 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

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,



**Nneka Kanu**  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 470919

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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