



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-06956

Dear Ms. Cortez:

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# 485491.

The City of El Paso (the "city") received a request for information, including the executed contract, pertaining to solicitation number 2011-308R. Although you take no position on whether the requested information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Weidner, Inc. ("Weidner"). Accordingly, you notified Weidner 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 reviewed the submitted information.

Initially, we note you did not submit any information responsive to the request for the executed contract for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume the city has

released it to the requestor. If the city has not released any such information, it must release the executed contract to the requestor at this time. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We next 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(d) 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 letter, we have not received comments from Weidner on why the company's submitted information should not be released. Therefore, we have no basis to conclude Weidner has protected proprietary interests in the submitted information. *See id.* § 552.110; 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 any portion of the submitted information on the basis of any proprietary interest Weidner may have in it.

Some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, as no exceptions to disclosure have been raised, the city must release the submitted information. However, any portion of the submitted information that is subject to copyright may be released only in accordance with copyright law.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 485491

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Charles Curry
Weidner, Inc.
111 Congress Avenue, Suite 400
Austin, Texas 78701
(w/o enclosures)