



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2013

Mr. Gary B. Lawson
Counsel for Dallas Police and Fire Pension System
Strasburger & Price, L.L.P.
901 Main Street, Suite 4400
Dallas, Texas 75202

OR2013-18578

Dear Mr. Lawson:

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# 504196.

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for e-mails to and from a named individual containing a specified term for a specified period. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of Arthur J. Gallagher Risk Management Services, Inc. ("Gallagher"). Accordingly, you provide documentation showing you notified Gallagher 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 Gallagher. We have considered the submitted arguments and reviewed the submitted information.

¹Although you mark some of the submitted information under section 552.110 of the Government Code, you provide no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302. Additionally, we note, section 552.110 is designed to protect the interests of third parties not the interests of a governmental body. *See generally* Open Records Decision No. 592 (1991).

Gallagher asserts its information is excepted from public disclosure under section 552.104 of the Government Code. This exception protects the competitive interests of governmental bodies such as the system in connection with competitive bidding and certain other competitive situations, not the proprietary interests of private parties such as Gallagher. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, the system raises section 552.104 as an exception to disclosure. Thus, we will address the system's arguments under section 552.104.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See* Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both instances, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2, 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* ORD 593 at 2. Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* ORD 541.

The system generally contends the submitted information would provide an advantage to a competitor or bidder if released. The system also generally argues the release of the submitted information would cause harm to its marketplace interests. Upon review, we find the system has failed to demonstrate how release of the submitted information would cause potential harm to the system's interests in a particular competitive situation. Therefore, we find the system has failed to demonstrate the applicability of section 552.104 of the Government Code to the submitted information, and it may not be withheld on that basis.

Next, we address Gallagher's arguments 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 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Upon review, we find Gallagher has made only conclusory allegations that the release of any of the submitted information would result in substantial harm to its competitive position. *See*

ORD 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). Accordingly, none of the submitted information may be withheld under section 552.110(b). As no further arguments against disclosure have been made, 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 504196

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Daniel M. Tropp
Area President
Arthur J. Gallagher Risk Management Services, Inc.
5420 Lyndon B. Johnson Freeway, Suite 400
Dallas, Texas 75240
(w/o enclosures)