

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00441-CV

Genuine Parts Company, Inc., Appellant

v.

Ken Paxton, Attorney General of Texas, Appellee

**FROM THE 353RD DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-18-002745, THE HONORABLE STEPHEN YELENOSKY, JUDGE PRESIDING**

MEMORANDUM OPINION

Genuine Parts Company, Inc., appeals from the district court's final judgment denying Genuine Parts's request for a declaration under the Texas Public Information Act (PIA). *See* Tex. Gov't Code §§ 552.001-.353. Genuine Parts brought suit to prevent disclosure of a Settlement Agreement that resolved litigation between it and the City of Houston (the City) arising out of Genuine Parts's provision of automotive parts and services to the City's fleet vehicles. The final judgment denies Genuine Parts its requested relief and orders that the Settlement Agreement at issue be made available to the requestor. We will affirm the district court's judgment.

BACKGROUND

In March 2018, the City informed Genuine Parts that it had received a PIA request for a copy of a Settlement Agreement between the City and Genuine Parts. The

requestor was an attorney with a Virginia-based law firm. Genuine Parts notified the Attorney General of Texas of its objections to the release of the Settlement Agreement. *See id.* § 552.305(b) (providing that person whose privacy or property interests are implicated by request may submit reasons for withholding information to attorney general). Genuine Parts argued that the Settlement Agreement was excepted from disclosure because it contained information that if disclosed would “give advantage to a competitor or bidder,” *see id.* § 552.104(a), and contained “commercial or financial information” that if disclosed “would cause substantial competitive harm” to Genuine Parts, *see id.* § 552.110(b).¹ After considering Genuine Parts’s objections, the Attorney General issued a letter ruling that the Settlement Agreement was not excepted from disclosure under the PIA.

Genuine Parts then filed suit against the Attorney General, challenging the ruling. Genuine Parts sought a declaration that the Settlement Agreement was not subject to disclosure because it fell within one or more exceptions to disclosure under the PIA. The Attorney General filed a motion for summary judgment arguing that, as a matter of law, the Settlement Agreement did not fall within an exception to disclosure under the PIA. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357 (Tex. 2000) (“[W]hether information is subject to the Act and whether an exception to disclosure applies to the information are questions of law.”). After a hearing, the trial court granted the Attorney General’s motion for summary judgment and

¹ In 2019, the Legislature amended the PIA, including section 552.104(a). *See* Act of May 23, 2019, 86th Leg., ch. 1216, §3, 2019 Tex. Sess. Law Serv. ch. 1216. The amendments, however, apply only to a request for public information that is received by a governmental body or an officer for public information on or after January 1, 2020, the effective date of the Act. *Id.* § 10. Citations in this opinion are to the version of the PIA in effect at the time the request at issue in this case was made.

declared that the Settlement Agreement was public information not excepted from disclosure. This appeal followed.

DISCUSSION

We review the district court's granting of a summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). Summary judgment is proper when there are no disputed issues of material fact, and the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Shell Oil Co. v. Khan*, 138 S.W.3d 288, 291 (Tex. 2004). In general, matters of statutory construction are legal questions. See *Johnson v. City of Fort Worth*, 774 S.W.2d 653, 656 (Tex. 1989). Specifically, whether information is subject to the PIA and whether an exception to disclosure applies to the information are questions of law that we review de novo. See *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 674 (Tex. 1995).

The PIA “guarantees access to public information, subject to certain exceptions.” *Texas Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011). Public information includes information that is collected, assembled, or maintained by or for a governmental body. Tex. Gov’t Code § 552.002(a). Such information is available by request unless an exception applies. *In re City of Georgetown*, 53 S.W.3d 328, 331 (Tex. 2001). The PIA is to be liberally construed in favor of granting requests for information. Tex. Gov’t Code § 552.001(b). Exceptions to the disclosure requirement of the PIA are narrowly construed. *Arlington Indep. Sch. Dist. v. Texas Att’y Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.).

A request for public information typically involves the governmental body holding the information and the citizen requesting it and, if the governmental body believes an

exception applies, it must promptly ask the Attorney General for a ruling. Tex. Gov't Code § 552.301. When a citizen requests information that may also implicate the privacy or property interests of third parties, the PIA permits the third party to raise the issue and any applicable exception to the information's disclosure with the Attorney General, in district court, or both. *See id.* §§ 552.305(b) (permitting person whose privacy or property interests are implicated to appear in Attorney General's administrative determination of the request); .325 (recognizing third party's right to file suit seeking to withhold information from requestor). Genuine Parts is such a third party here.

Genuine Parts argues that the Settlement Agreement is excepted from disclosure under PIA section 552.104. *See id.* § 552.104(a). This section excepts "information that, if released, would give advantage to a competitor or bidder." *Id.* Genuine Parts bears the burden of establishing that this exception to public disclosure applies to the Settlement Agreement. *See Texas Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670, 673-74 (Tex. App.—Austin 2010, no pet.). The Texas Supreme Court has held that the test under section 552.104(a) is whether disclosure of the information would provide a competitor or bidder with an advantage, albeit not necessarily a decisive one. *See Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). To support its claim that disclosure of the Settlement Agreement would give an advantage to a Genuine Parts competitor, Genuine Parts submitted the affidavit of Josh Peters, a Genuine Parts sales manager. In his affidavit, Peters averred:

John Trant worked at [Genuine Parts] for over 20 years. He served in various roles including as President of NAPA Auto Parts in Detroit. In 2013 Mr. Trant left [Genuine Parts] to join his brother-in-law, Allan Parrot, the President of Tidewater Fleet Supply, LLC ("Tidewater."). Mr. Trant is currently Tidewater's Vice President of Sales and Marketing.

Tidewater is a direct competitor of [Genuine Parts] in the field of vendor-managed inventory for auto parts. Tidewater and [Genuine Parts] often compete against each other for municipal contracts in Virginia and North Carolina.

Tidewater has previously used public records disclosures to harm [Genuine Parts's] business interests. For example, after losing a bid against [Genuine Parts] for a contract with the City of Norfolk, Tidewater unsuccessfully petitioned the city for reconsideration on four separate occasions. The first challenge was on cost methodology grounds, which caused the contract to be re-bid, with [Genuine Parts] once again prevailing. The same cycle occurred following Tidewater's second and third challenges. The City of Norfolk refused to hear Tidewater's fourth challenge.

[Genuine Parts] diligently performed its contract with the City of Norfolk for approximately two years. In 2016, [Genuine Parts] received a Freedom of Information Act Request for the invoice data related to the contract. [Genuine Parts] did not challenge the request, because we believed it was innocent and did not know that Tidewater was behind it.

In 2017, after Tidewater received our financial data, it brought alleged wrongdoing and discrepancies to the attention of the City of Norfolk. The City initiated a multi-month audit which did not uncover any of the allegations which Tidewater claimed.

I was informed that a Texas Public Information Act request had been made for disclosure of the Settlement Agreement between the City of Houston and [Genuine Parts]. [Genuine Parts] routinely bids against Tidewater for municipal contracts, and our contract with the City of Norfolk is up for renegotiation next year. [Genuine Parts] believes that Tidewater will use the Settlement Agreement to undermine [Genuine Parts's] bid and to also out-bid [Genuine Parts] based on the financial information in the Agreement. [Genuine Parts] also believes that this information could give Tidewater an advantage in future bids, as Tidewater could refer to the Settlement Agreement's [sic] to cast a dark cloud over [Genuine Parts's] ability to perform municipal contracts.

Genuine Parts contends that if the Settlement Agreement is disclosed to the requestor, Tidewater, a competitor, will be able to (1) use the financial terms contained in the Settlement Agreement to out-bid Genuine Parts for municipal contracts, specifically a contract with the City of Norfolk,

Virginia and (2) use the Settlement Agreement to “undermine” Genuine Parts’s bid for that municipal contract.²

Genuine Parts also relied on a letter that the requestor filed with the Attorney General in support of its position that the Settlement Agreement was not excepted from disclosure. Genuine Parts argues that the letter is “a playbook of [Tidewater’s] intended use of the Settlement Agreement as a commercial weapon.” Specifically, Genuine Parts points to the letter as evidence that Tidewater “salivates at the opportunity to receive [Genuine Parts’s] sensitive information to inflict commercial and reputational harm” and that Tidewater intends to “use the document to undermine and cast a dark shadow over [Genuine Parts’s] position in future competitive bidding situations.” Both these arguments depend on whether the record establishes that the Settlement Agreement does, in fact, contain information that would give Tidewater a competitive advantage in bidding against Genuine Parts for contracts. *See Boeing Co.*, 466 S.W.3d at 841 (test under section 552.104 is whether knowing the information would provide competitive advantage). We conclude that it does not.

The Settlement Agreement identifies the parties and generally describes their dispute, the details of which are contained in publicly available federal court filings in *City of Houston v. Genuine Parts Co.*, Case No. 4:16-CV-00694 (S.D. Tex.).³ In its brief, Genuine Parts asserts that the first four pages of the Settlement Agreement include “critical information regarding the commercial relationship between [Genuine Parts] and the City of Houston, including inventory and performance figures.” Having reviewed the Settlement Agreement, we

² Although not directly stated, Genuine Parts’s argument implies that the Virginia-based law firm that made the PIA request is acting on behalf of, or in concert with, Tidewater.

³ The fact that the parties reached a settlement was also a matter of public record as evidenced by an April 2017 City of Houston Media Alert announcing the settlement.

cannot agree with this characterization of its contents. The Settlement Agreement sets forth the total amount of a payment to be made by one party to the other along with the manner and timing of the payment. The Settlement Agreement references a lump sum amount relating to inventory. There is no description of the nature of the inventory or its pricing, and there is nothing that could be construed to constitute “performance figures.” Genuine Parts does not explain how the lump sum payment information could be used to assist Tidewater in future competitive bidding against Genuine Parts.

The Peters affidavit also fails to explain how the contents of the Settlement Agreement might give Tidewater a competitive advantage. Peters avers that Tidewater has in the past acquired information that it used to attempt to gain a competitive advantage over Genuine Parts but does not specify what that information was or how it is similar to the information contained in the Settlement Agreement. Peters avers that he *believes* Tidewater will use information contained in the Settlement Agreement to “undermine” and “out-bid” Genuine Parts for a contract with the City of Norfolk, but he does not explain how the general terms of a settlement agreement with a different entity relating to a different contract could provide any competitive bidding advantage.⁴ Peters’s belief that Tidewater “could refer to the Settlement Agreement’s [sic] to cast a dark cloud over [Genuine Parts’s] ability to perform municipal contracts” also fails as evidence that specific information contained in the Settlement Agreement would give Tidewater a competitive advantage in bidding for a contract with the City of Norfolk.

⁴ This Court has previously held that the PIA prohibits inquiry into the motives of the party requesting the release of information. *See Boeing Co. v. Abbott*, 412 S.W.3d 1, 6 (Tex. App.—Austin 2012) (citing *A & T Consultants v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995)), *rev’d on other grounds, Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015).

In *Boeing v. Paxton*, the supreme court framed the question as whether Boeing's lease with the Port of Houston contained information that could be used to "allow[] the competitor to underbid Boeing on government contracts" and concluded that the specific financial aspects of the lease "including rental rates, its share of common maintenance costs, insurance coverage required by the Port, liquidated damages provisions, and lease incentives" could enable competitors to "reverse engineer" Boeing's bid and then undercut it. *See Boeing v. Paxton*, 466 S.W.3d 831, 839 (Tex. 2015). The court noted that although the "gross amounts" of those costs that Boeing had paid to the Port were publicly available, the *details* contained in the lease itself, if disclosed, would provide an advantage to Boeing's competitors. *Id.* at 840. Guided by the supreme court's reasoning in *Boeing*, we conclude that the information contained in the Settlement Agreement is not sufficiently detailed to provide a competitor with any advantage in bidding against Genuine Parts for a contract with the City of Norfolk or any other entity.

Genuine Parts also contends that the information contained in the Settlement Agreement can be used to gain an advantage by showing that Genuine Parts has a poor reputation for performing contract obligations. Genuine Parts focuses on what it characterizes as Tidewater's desire to use the Settlement Agreement to inflict reputational harm on Genuine Parts and "cast a dark shadow over Genuine Parts's position in future competitive bidding situations." The Settlement Agreement does not, however, include any information germane to Genuine Parts's performance of its contract obligations with the City of Houston. Both parties to the Settlement Agreement expressly disclaim any liability arising out of any factual allegations contained in the federal court pleadings and deny the veracity of those allegations. To be sure, the contents of any settlement agreement, including this one, are likely to be sensitive to the settling parties, and most parties include confidentiality provisions in their settlement agreements

to avoid disclosure of their terms. However, the Legislature has identified “a settlement agreement to which a governmental body is a party” as core public information. *See* Tex. Gov’t Code § 552.022(a)(18). Moreover, information that is “sensitive” does not necessarily provide a competitor with a competitive advantage, as required to be excepted from disclosure under section 552.104(a).

The evidence in the record fails to demonstrate that the Settlement Agreement contains information that “if released would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The trial court properly concluded that the Settlement Agreement was not excepted from disclosure under section 552.104(a).

We next consider whether the Settlement Agreement is excepted from disclosure under Government Code section 552.110(b). *Id.* § 552.110(b). That section provides:

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 is excepted from the requirements of Section 552.021.

Id. (emphasis added). “This section is a fact-specific exemption for information that is found to be a trade secret or privileged and confidential commercial or financial information.” *Envoy Med. Sys., L.L.C. v. State*, 108 S.W.3d 333, 337 (Tex. App.—Austin 2003, no pet.). It is not a categorical exemption for a specific kind of information or document. *Id.* To supply the specific factual evidence required to show that disclosure of the Settlement Agreement would cause substantial competitive harm, Genuine Parts again points to the Peters affidavit. The Peters affidavit, however, does not provide such evidence. In his affidavit, Peters attests to his belief that Tidewater would like to use the Settlement Agreement to outbid Genuine Parts when its City of Norfolk contract is up for renegotiation but does not explain how information contained in the

Settlement Agreement would accomplish that goal. In fact, the Peters affidavit explains how previous attempts by Tidewater to use information obtained through a FOIA request failed to result in the City of Norfolk “uncover[ing] any of the allegations which Tidewater claimed.”⁵ Without more, Peters’s opinion that release of the Settlement Agreement would harm its operations is conclusory. The Peters affidavit offers no specific evidence that disclosure of the Settlement Agreement would cause it “substantial competitive harm.” The evidence offered by Genuine Parts does not rise to the level of specificity the statute requires and the trial court properly concluded that the Settlement Agreement was not excepted from disclosure under section 552.110(b). *See id.* (representative’s opinion that release of information would harm operations did not rise to level of specificity required by section 552.110(b)).

Finally, Genuine Parts asserts that disclosure of the Settlement Agreement would not advance the public policy of the PIA, which is “that the people of Texas ‘insist on remaining informed so that they may retain control over the instruments they have created.’” *Jackson v. State Office of Admin. Hearings*, 351 S.W.3d 290, 293 (Tex. 2011) (quoting Tex. Gov’t Code § 552.001(a)). Genuine Parts maintains that because the requestor in this instance was a resident of Virginia, not Texas, the policy goals of the PIA are not implicated. Whether information is excepted from disclosure depends not on the identity of the requestor, but rather on whether the party resisting disclosure demonstrates that the information falls within one of the statute’s exceptions. The text of the statute does not reflect that the requestor’s residence has any bearing

⁵ In its brief, Genuine Parts asserts that the Peters affidavit supplies evidence that an audit triggered by information Tidewater acquired through the FOIA request “substantially harmed [Genuine Parts’s] relationship with the City.” In his affidavit, however, Peters made no such claim. Moreover, Peters’s affidavit contains only his speculation about how Tidewater might use the Settlement Agreement to cause harm to Genuine Parts’s relationship with the City of Norfolk.

on that analysis. The Attorney General has also recognized that the PIA does not require that a requestor be a Texas resident or an American citizen. *See* Office of the Attorney General of Texas Public Information Act Handbook 2020 p. 30 n.121 (“The Act does not require a requestor to be a Texas resident or an American citizen.”) (citing Tex. Gov’t Code §§ 552.001, .021, .221(a)). The Legislature has confirmed the inherent public interest in settlement agreements to which a governmental body is a party by designating it as core public information regardless of the identity or residence of the party seeking disclosure. *See* Tex. Gov’t Code § 552.022(a)(18).

CONCLUSION

We conclude that Genuine Parts did not demonstrate that the Settlement Agreement falls within any exception in the PIA that would prevent its disclosure. Consequently, we affirm the trial court’s judgment.

Thomas J. Baker, Justice

Before Justices Goodwin, Baker, and Kelly

Affirmed

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