



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Mr. Joe H. Thrash  
Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2015-25074

Dear Mr. Thrash:

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# 588781.

The Texas Commission on the Arts (the "commission"), which you represent, received a request for specified applications and related panel scores and comments. The commission claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The commission also states it notified interested third parties of the commission's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 at 3 (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 considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Section 552.104(a) 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

“test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The commission informs us the information it seeks to withhold under section 552.104 consists of comments made by reviewers of grants submitted to the commission. The commission asserts release of this information “could allow an applicant to tailor its application in a way that sought to appeal to the reviewers’ predilections” and “the reputation of the application could be affected and the bidding process adversely impacted.” The commission also asserts the release of the information would adversely impact the grant program at issue because experts in the various fields of arts who review the grants “could become reluctant to offer their services, knowing that their comments could be publicly released, or they may just no longer offer candid assessments[.]” However, the commission does not assert the requested information pertains to a competitive bidding situation. The commission also does not argue it has specific marketplace interests in the information at issue. Thus, upon review we find the commission has not established release of the submitted information would give an advantage to a competitor. Therefore, the commission may not withhold the submitted information under section 552.104.


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 requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, no interested third party has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of any interested third party, and the commission may not withhold any portion of it on that basis. *See* 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, 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. Therefore, the commission 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sdk

Ref: ID# 588781

Enc. Submitted documents

c: Requestor  
(w/o enclosures)