



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2016

Mr. Robert Ray
Assistant City Attorney
City Attorney's Office
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2016-05654

Dear Mr. Ray:

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# 601460.

The City of Longview (the "city") received a request for the proposals submitted for a specified RFP. Although the city takes no position as to whether the submitted information is excepted under the Act, the city informs us release of this information may implicate the proprietary interests of PM AM Corporation ("PM AM"). Accordingly, the city states, and provides documentation showing, it notified PM AM of the request for information and of its right to submit arguments to this office as to why the information at issue 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 PM AM. We have considered the submitted arguments and reviewed the submitted information.

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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. PM AM states it has competitors. In addition, PM AM states release of the information at issue would give its competitors an advantage in future bids "by knowing exactly what information PM AM includes in their [sic] proposals including the exact services provided, the fee charged by PM AM for its services, the allocation of certain

expenses between the city and PM AM, the extent of any insurance coverage required by PM AM, and the extent of the parties [sic] respective indemnification obligations, if any.” After review of the information at issue and consideration of the arguments, we find PM AM has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.¹

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 601460

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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¹As our ruling is dispositive, we need not address PM AM’s remaining argument against disclosure.