



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2016

Mr. Jonathan Miles
Open Government Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2016-11090

Dear Mr. Miles:

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# 610155.

The Texas Health and Human Services Commission (the "commission") received three requests for information pertaining to a specified request for bid proposals. The commission states it does not have information responsive to a portion of one of the requests.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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*

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Co. v. Paxton, 466 S.W.3d 831, 841 (Tex. 2015). The commission states the submitted information pertains to a competitive bidding situation. The commission states the submitted information pertains to projects for which a bidder was selected, but a contract has not been executed. The commission asserts release of the submitted information would negatively impact negotiations between the commission and the selected bidder. The commission further asserts if the commission is unable to negotiate a contract with the winning bidder the commission will have to negotiate with another bidder or republish the request for proposals. Thus, the commission argues release of the submitted information would harm the commission's ability to obtain the lowest price possible in a future related bidding process, should the current negotiations fail. After review of the information at issue and consideration of the arguments, we find the commission has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the submitted information under section 552.104(a) of the Government Code.

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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 610155

Enc. Submitted documents

c: Requestor
(w/o enclosures)