



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 7, 2016

Ms. Michele Freeland  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773

OR2016-24705

Dear Ms. Freeland:

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# 633590 (PIR# 16-5019).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified request for proposals, including the contract with the winning bidder and any amendments to the contract, the prices offered by each bidder, the proposal of the winning bidder, and the evaluation scores for each bidder. You state the department has released some of the information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Semper Feye Solutions, Inc. ("Semper"). Accordingly, you state, and provide documentation showing, you notified Semper 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 Semper. 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. Semper states it has competitors. In addition, Semper indicates release of its information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Semper has established release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/akg

Ref: ID# 633590

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address Semper’s remaining arguments against disclosure.