



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2016

Mr. Micah King
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-25529

Dear Mr. King:

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# 634551 (PIR Nos. 28898, 28987, 28996).

The City of Austin (the "city") received three requests from different requestors for information pertaining to a specified city contract and a specified request for proposals. You state you released most of the requested information to the requestors. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Rudd & Wisdom, Inc. ("Rudd & Wisdom"). Accordingly, you state, and provide documentation showing, you notified Rudd & Wisdom 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 considered the exception you claim 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). 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 (Tex. 2015). The city represents the submitted information

pertains to a competitive bidding situation. In addition, the city states the submitted information pertains to a pending request for proposals and indicates release of the submitted information would harm the city's negotiating position. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information would give 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.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 634551

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)