



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2016

Mr. John Knight
Deputy City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2016-27684

Dear Mr. Knight:

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# 637779.

The City of Denton (the "city") received three requests for information pertaining to specified requests for proposals and a request for qualifications related to a specified project. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.133 of the Government Code. You state the release of this information may also implicate the proprietary interests of Bergen Engines AS ("Bergen"), Burns & McDonnell Engineering Co., Inc. ("BMcD"), Fagen, Inc. ("Fagen"), GE Power & Water ("GE"), MAN Diesel & Turbo North America, Inc. ("MAN"), Saulsbury Industries ("Saulsbury"), and Wartsila North America, Inc. ("Wartsila"). Accordingly, you state, and provide documentation showing, you notified Bergen, BMcD, Fagen, GE, MAN, Saulsbury, and Wartsila of the request for information and of their rights 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 BMcD, GE, and Wartsila. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹ We have also received and

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

considered comments received from one of the requestors. *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 (Tex. 2015). You represent the information pertains to a competitive bidding situation. In addition, you state release of the submitted information would permit bid under-cutting and allow competitors to accurately estimate bids in future competitive bidding situations when the city seeks bids for the same or similar equipment. Thus, you state release of the submitted information would harm the city in a later competitive bidding situation if the city seeks to obtain more favorable offers. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a).²

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/akg

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 637779

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

7 Third Parties
(w/o enclosures)