



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 16, 2016

Ms. Lisa K. Hargrove  
General Counsel  
Houston First Corporation  
1001 Avenida de las Americas  
Houston, Texas 77010

OR2016-27878

Dear Ms. Hargrove:

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# 638360.

The Houston First Corporation (the "corporation") received a request for four categories of information pertaining to a specified partnership. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code.<sup>1</sup> You also state release of the submitted information may implicate the proprietary interests of the Greater Houston Convention and Visitors Bureau (the "bureau") and Vivienne Tam. Accordingly, you state, and provide documentation showing, you notified the third parties 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 a representative of the bureau. We have considered the arguments and reviewed the submitted information.

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<sup>1</sup>Although you raise section 552.110 of the Government Code, we note that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from another person). Thus, we do not address the corporation's assertion of section 552.110, but we will consider a third party's assertion of that exception.

Initially, we note you have only submitted information related to the requested contract. You have not submitted information responsive to the other categories of requested information. To the extent any additional information responsive to the request existed on the date the corporation received the request, we assume the corporation has released it. If the corporation has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. The bureau states it has competitors. In addition, the bureau states release of the submitted information would give an advantage to its competitors. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find the bureau has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the corporation may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</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.

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

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,

A handwritten signature in black ink that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 638360

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)