



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2017

Ms. Kristen Lee
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2017-04615

Dear Ms. Lee:

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# 647900 (C.A. File Nos. 16GEN1150 and 16PIA0698).

The Harris County Purchasing Agent's Office (the "purchasing agent's office") received a request for the winning party's response and best and final offer submitted in response to a specified RFP as well as the final contract.¹ Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Corrections Software Solutions, LP ("CSS").² Accordingly, you state, and provide documentation showing, you

¹We note the purchasing agent's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W. 3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the purchasing agent's office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the purchasing agent's office's violation of section 552.301 in requesting this decision.

notified CSS 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 CSS. We have reviewed the submitted information and considered the submitted arguments.

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. CSS states it has competitors. In addition, CSS states the release of some of its information would give their competitors an unfair competitive advantage. After review of the information at issue and consideration of the arguments, we find CSS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the purchasing agent's office may withhold the information we have indicated under section 552.104(a) of the Government Code.³

Some of the remaining information is subject to section 552.136 of the Government Code.⁴ Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the purchasing agent's office must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the purchasing agent's office may withhold the information we have indicated under section 552.104(a) of the Government Code. The purchasing agent's office must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be released.

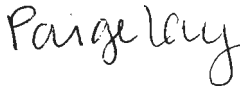
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³As this ruling is dispositive, we need not consider the remaining arguments against disclosure of the information at issue.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 647900

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)