



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 10, 2017

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2017-05105

Dear Mr. Miles:

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# 654224 (OR-20170202-12254).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to the sale, rental, or leasing of Board of Evaluation of Interpreters test to the State of Michigan. The commission claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. The commission states the release of the requested information may implicate the interests of the State of Michigan's Division on Deaf, Deaf-Blind, and Hard of Hearing (the "State of Michigan"). Accordingly, you state you notified the State of Michigan of this request and its right to submit arguments to this office. *See* Gov't Code § 552.304. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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*

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<sup>1</sup>We assume 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.

*Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The commission states it has specific marketplace interests in the information at issue because the it is competing to license the Evaluation of Interpreters test to other states. In addition, the commission states the release of the information would harm its position in the marketplace by allowing competitors to use the commission's pricing, grading methods and processes, and other internal information not generally available. The commission further states that "competitors and potential licensees would be able to modify their proposals to other states and bids based on this information." After review of the information at issue and consideration of the arguments, we find the commission has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude commission may withhold the submitted information under section 552.104(a).

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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 654224

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)