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ATTORNEY GENERAL OF TEXAS

March 27, 2017

Mr. Hasting Stewart  
Counsel for Houston Super Bowl Host Committee  
Winstead Attorneys  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701

OR2017-06223

Dear Mr. Stewart:

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# 651546.

The Houston Super Bowl Host Committee (the "committee") received a request for the last three years of fiscal records pertaining to the committee. The committee claims the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code.<sup>1</sup> The committee also states, and provides documentation showing, it notified the National Football League (the "NFL") of the committee's receipt of the request for information and of the NFL's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 correspondence from the NFL objecting to the release of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the committee only submitted a document related to bid specifications and requirements, and an associated contract. We assume, to the extent any additional responsive

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<sup>1</sup>We understand the committee to raise section 552.101 of the Government Code based on its arguments.

information existed when the committee received the request for information, the committee has released it to the requestor. If not, then the committee must do so immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.104(a) of the Government Code exempts 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 842. The NFL states the submitted information contains sensitive financial and commercial requirements that apply to future event contracts and seeks to withhold the terms of the contract. In addition, the NFL states “disclosure of this information may compromise the NFL's negotiating position with respect to future bids for Super Bowl games by providing potential host cities an early look at bid requirements and a roadmap to follow in submitting their own bids.” 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 the *Boeing* decision, 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 832, 841. After review of the information at issue and consideration of the arguments, we find the NFL has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the committee may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

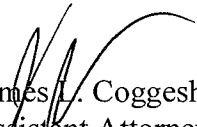
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 651546

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)