



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 31, 2017

Mr. Robert F. Johnson, III  
Counsel for the Harris County Sports & Convention Corporation  
Gardere Wynne Sewell, LLP  
600 Congress Avenue, Suite 3000  
Austin, Texas 78701

OR2017-06749

Dear Mr. Johnson:

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# 651541.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for information pertaining to a specified lease agreement.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of SMG; GTE Mobilnet of South Texas LP d/b/a Verizon Wireless ("Verizon"); Houston NFL Holdings, LP; and Houston Livestock Show and Rodeo, Inc. Accordingly, you state, and provide documentation showing, you notified these 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 Verizon. We have reviewed the submitted information and 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

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<sup>1</sup>We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request).

competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Verizon states it has competitors. In addition, Verizon states release of the information at issue would give an advantage to its competitors and seeks to withhold the submitted information. 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 Verizon has established the release of the information at issue would give advantage to a competitor or bidder. Thus, 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.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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

Ref: ID# 651541

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)