



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 28, 2017

Mr. Edward Konop  
Associate Compliance Specialist  
Texas Windstorm Insurance Association  
P.O. Box 99090  
Austin, Texas 78709-9090

OR2017-09143

Dear Mr. Konop:

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# 654954 (ORR# 000502).

The Texas Windstorm Insurance Association (the "association") received two requests from different requestors for information pertaining to a specified request for proposals. The association claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the association states release of the submitted information may implicate the proprietary interests of Guy Carpenter & Company, L.L.C. ("Carpenter"); Holborn Corporation ("Holborn"); JLT Re (North America), Inc. ("JLT"); and Willis Re ("Willis"). Accordingly, the association states, and provides documentation showing, it notified Carpenter, Holborn, JLT, and Willis of the request for information and of the 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 Carpenter, Holborn, JLT, and Willis. We have reviewed the submitted information and the submitted arguments.

Initially, we note Carpenter argues against the release of information that was not submitted by the association. This ruling does not address information that was not submitted by the association and is limited to the information the association has submitted for our review.

*See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. The association, Carpenter, Holborn, JLT, and Willis raise section 552.104 for portions of the submitted information. The association represents the information it marked pertains to a competitive bidding situation. In addition, the association states release of the information it marked would cause harm because the competitive situation is ongoing and no contract has yet been executed. Further, Carpenter, Holborn, JLT, and Willis state they have competitors. Carpenter, Holborn, JLT, and Willis argue release of the information they have noted would cause harm because knowledge of the information would permit competitors to tailor their responses to future requests for proposals and to undercut their pricing, thereby undermining Carpenter’s, Holborn’s, JLT’s, and Willis’s competitive positions. After review of the information at issue and consideration of the arguments, we find the association and Carpenter, Holborn, JLT, and Willis have established the release of the information they seek to withhold would give advantage to a competitor or bidder. Thus, we conclude the association may withhold the information at issue, which the association marked and we marked, under section 552.104(a) of the Government Code.<sup>1</sup>

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the association may withhold the information it marked and we marked under section 552.104(a) of the Government Code. The association must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

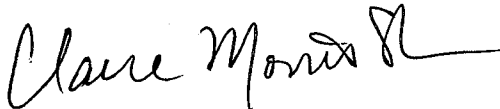
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its 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 "Claire Morris Sloan". The signature is written in a cursive style with a long horizontal flourish at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tdw

Ref: ID# 654954

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)