



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2017

Ms. Kasey Feldman-Thomason
General Counsel
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR2017-10030

Dear Ms. Feldman-Thomason:

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# 656832 (PUC ID# 2017-02-014).

The Public Utility Commission of Texas (the "commission") received a request for specified filings made by Foremost Telecommunications Corporation ("Foremost") during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Foremost. Accordingly, you state, and provide documentation showing, you notified Foremost of the request for information and of its right to submit arguments to this office as to why the information at issue 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 arguments from Foremost. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked a portion of the submitted information as not responsive to the instant request for information because it does not relate to Foremost. This ruling does not address the public availability of non-responsive information, and the commission need not release non-responsive information to the requestor.

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. Foremost states it has competitors. In addition, Foremost states release of the responsive information would give advantage to its competitors by revealing the amount of infrastructure Foremost owns in the area at issue in the responsive information. After review of the information at issue and consideration of the arguments, we find Foremost has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the responsive information under section 552.104(a) of the Government Code.¹

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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/nmd

Ref: ID# 656832

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.