



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Mr. Phillip J. Smith
Assistant District Attorney
Civil Division
County of Smith
100 North Broadway, 4th Floor
Tyler, Texas 75702

OR2017-11588

Dear Mr. Smith:

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# 659469.

Smith County (the "county") received a request for (1) all proposals received in response to a specified request for proposals; (2) documentation pertaining to review of the proposals; and (3) the minutes from two specified meetings. The county claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception the county claims and reviewed the submitted information.

Initially, we note the county has not submitted documentation pertaining to review of the proposals or the minutes from the two specified meetings, as specified in the instant request. Further, the county does not inform us it has released this information. Although the county states it has submitted a representative sample of the requested information, we find the submitted information is not representative of the requested information. Please be advised this open records letter ruling applies only to the types of information the county has submitted for our review. This ruling does not authorize the county to withhold any information that is substantially different from the types of information submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent the requested documentation pertaining to the review of the

proposals and the requested meeting minutes existed when the present request was received, we assume such information has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The county represents the information pertains to a competitive bidding situation. In addition, the county states “the sale is currently ongoing and the county has only just authorized negotiations with the highest-ranked broker bidder[.]” Further, the county states “release of the requested information, while the negotiation is ongoing and not complete, would impair the [c]ounty’s bargaining position in obtaining the best possible broker services for the [c]ounty.” After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the submitted information under section 552.104(a) of the Government Code.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 659469

Enc. Submitted documents

c: Requestor
(w/o enclosures)