



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2017

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-13318

Dear Ms. Evans:

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# 662425 (GC Nos. 24199, 24205, 24238, and 24260).

The City of Houston (the "city") received four requests from different requestors for the bid documents for a specified request for proposal ("RFP") and additional specified information pertaining to the specified RFP. You claim a portion of the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing you notified ABM Mid-City Parking, LLC ("ABM"), and SP+ Global Alexander ("SP") 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 ABM and

¹We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office pertaining to GC No. 24238. *See Gov't Code § 552.301(b), (e).* Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments against release of this information. *See id.* §§ 552.007, .302, .352.

SP. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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, 841 (Tex. 2015). You represent the information in Exhibit 2 pertains to a contract that has not been fully negotiated or executed. You argue the competitive bidding process would be negatively impacted if the information at issue were released. You also state release of the information at issue would present a clear threat of harm to the city’s ability to obtain the lowest price possible in any future related bidding process. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Exhibit 2 under section 552.104(a) of the Government Code.³

ABM asserts a portion of its information is protected under section 552.104 of the Government Code. SP asserts all of its information at issue is protected under section 552.104 of the Government Code. As noted above, section 552.104(a) 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 also invoke this exception, which is subject to the test discussed above. *Boeing*, 466 S.W.3d at 833. ABM and SP each state they have competitors. ABM argues releases of the information it has marked would cause significant competitive harm because competitors will be able to use their responses to undercut their business in the future. SP argues release of its information would allow their competitors to put forth comparable or improved bids without incurring the same considerable time and financial investment as SP, and it would result in proprietary harm to SP. After review of the information at issue and consideration of the arguments, we find ABM and SP have established the release of the information they seek to withhold would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information ABM marked and all of SP’s information under section 552.104(a) of the Government Code.⁴

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

⁴As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

In summary, the city may withhold Exhibit 2 under section 552.104(a) of the Government Code. The city may withhold the information ABM marked and all of SP's information under section 552.104(a) of the Government Code. The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/nmd

Ref: ID# 662425

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)