



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Mr. Andrew Devine
Senior Associate Attorney
Parkland Health and Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2017-14444

Dear Mr. Devine:

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# 663554 (DCHD# 17-31, 32, and 33).

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "system") received three separate requests for a specified bid tabulation. One of the requestors also seeks the winning bid.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of several third parties.² 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 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 comments from Debbie & Son's Pressure

¹We note the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the system notified the following third parties: Alderink Enterprises/Cleaner Image; City Wide Building Services, L.L.C.; Debbie and Son's Pressure Washing; KAT Klean, Inc.; Member's Building Maintenance; Protect Environmental Services, Inc.; and Supreme Commercial Specialties.

Washing (“Debbie and Son”). We have considered the submitted arguments and reviewed the submitted information.

Next, we note Debbie and Son argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the system submitted to us for our review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the system submitted as responsive to the request for information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. Debbie and Son states it has competitors. In addition, Debbie and Son states release of its bid price would provide its competitors with an unfair advantage. 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 (public has interest in knowing terms of contract with state agency), 514 (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 839. After review of the information at issue and consideration of the arguments, we find Debbie and Son has established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold Debbie and Son's bid price, which we marked, under section 552.104(a) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. Upon review, we find the information Debbie and Son seeks to withhold does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of system employees. Therefore, we find section 552.117(a)(1) of the Government Code does not apply to the information at issue, and the system may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

In summary, the system may withhold the information we marked under section 552.104 of the Government Code. The remaining information must be released.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

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Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

4 Third Parties
(w/o enclosures)

