



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2017

Mr. Robert F. Johnson, III  
Counsel for the Harris County Sports & Convention Corporation  
Gardere Wynne Sewell, LLP  
600 Congress Avenue, Suite 3000  
Austin, Texas 78701

OR2017-16310

Dear Mr. Johnson:

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# 668766.

The Harris County Sports and Convention Corporation (the "corporation"), which you represent, received a request for a specified proposal.<sup>1</sup> You claim the submitted information is exempted from disclosure under section 552.104 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Aramark Sports and Entertainment ("Aramark"). Accordingly, you state, and provide documentation showing, you notified Aramark 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

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<sup>1</sup>We note the corporation 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

received comments from Aramark. We have considered the submitted arguments and reviewed the submitted information.

Aramark seeks to withhold the submitted information under section 552.104(a) of the Government Code. 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 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. Aramark states it has competitors. In addition, Aramark asserts release of the information would “advantage Aramark’s competitors . . . and disadvantage Aramark, by providing Aramark’s competitors with information about Aramark’s proprietary approach to providing housekeeping and janitorial services and Aramark’s proprietary pricing information and strategies.” 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 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (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 only to 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 831, 839. After review of the submitted information and consideration of the arguments, we find Aramark has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the corporation may withhold the submitted information under section 552.104(a).<sup>2</sup>

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](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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 668766

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)