



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 9, 2017

Mr. Sam Elsass  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-17967

Dear Mr. Elsass:

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# 675784 (PIR# 17-4848, 17-4792).

The Texas Department of Public Safety (the "department") received one request for bid tabulations pertaining to two specified projects, and a second request from a different requestor for one of the bid tabulations at issue. The department claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The department also indicates it notified Alamo 1, Enercon Services, Inc., Environmental Reconstruction Services, Green Star Environmental, Petroleum Solutions, Inc., and PKJ Construction of the department's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the claimed exception and reviewed the submitted information.

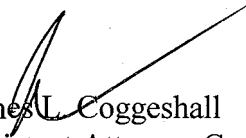
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The department states the submitted

information consists of a bid tabulation for a specified project. The department also states the release of the requested information would harm its “purchasing interests and weaken the department’s bargaining position as it deliberates its options and negotiates best value now and in the future.” Further, the department states, in the event that the requested information is released, “competing vendors would know the prices offered by an entity selling these goods or services to the department, which could artificially inflate prices and prevent the department from getting best value.” Upon review, we find the department has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the department 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 675684

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)