



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2017-18277

Dear Ms. Freeland:

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# 670965 (PIR #s 17-3740 & 17-3905).

The Texas Department of Public Safety (the "department") received two requests for bid tabulations pertaining to solicitation number 405-17-B002963. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you inform us release of this information may implicate the proprietary interests of Allied Electrical Services, Inc.; American Energy Efficiencies, Inc.; and Environmental Lighting Services ("ELS"). Accordingly, you state you notified these parties of the requests for information and of their 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 received comments from ELS. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the first requestor asks the department to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to

relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the department has made a good-faith effort to do so.

We also note ELS makes arguments for withholding certain information that was not submitted as responsive by the department to this office for review. Because we do not have this information before us for review, this ruling does not address any such information, and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested, or representative sample if voluminous amount of information was requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 assert release of the information at issue would “harm [the department’s] purchasing interests and weaken [the department’s] bargaining position as it deliberates options and negotiates best value now and in the future” because it would allow competing vendors to know the prices offered, which you contend “could artificially inflate prices and prevent the [d]epartment from getting best value[.]” After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue would give an 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.¹

You ask this office to issue a previous determination permitting the department to withhold bid tabulations under section 552.104 of the Government Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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/>

¹As we are able to make this determination, we need not address the remaining argument against disclosure.

[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 that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 670965

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)