



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2017

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2017-19826

Dear Ms. Sheely:

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# 673571.

The Travis County Purchasing Office (the "county") received a request for a specified contract. 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 Correction Solutions Group, L.L.C. ("CSG").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified CSG 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 received comments from CSG. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>We note, and you acknowledge, the county failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nevertheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the county's violation of section 552.301 in requesting this decision.

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). 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. CSG states it has competitors. In addition, CSG states release of some of its information would provide a competitive advantage to its competitors and seeks to withhold a portion of the contract at issue. 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 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 831, 139. After review of the information at issue and consideration of the arguments, we find CSG has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we marked under section 552.104(a) of the Government Code.<sup>2</sup>

Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>3</sup> Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Accordingly, the county must withhold the bank account and routing numbers in the submitted information under section 552.136 of the Government Code.

In summary, the county may withhold the information we marked under section 552.104 of the Government Code. The county must withhold the bank account and routing numbers under section 552.136 of the Government Code. The county must release the remaining information.

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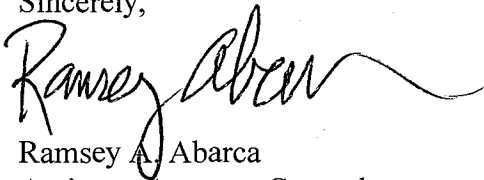
<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a long, sweeping flourish extending to the right.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

Ref: ID# 673571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)