



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Mr. Robert W. Patterson
Open Records Coordinator
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2017-23149

Dear Mr. Patterson:

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# 680437.

The Texas Health and Human Services Commission (the "commission") received three requests from different requestors seeking information related to request for proposals number 529-16-0007. The commission states it has released some of the requested information. Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of the submitted information may implicate the proprietary interests of Accenture State Healthcare Services, L.L.C. ("Accenture"). Accordingly, the commission states, and provides documentation showing, it notified Accenture of the request for information and of the right to submit arguments to this office as to why the submitted information 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). The commission has also submitted arguments from Accenture. We have reviewed the submitted arguments and 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). 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. Accenture states it has competitors. In addition, Accenture states release of portions of the submitted information, which it has noted, would cause harm to its commercial interests. 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 at 841. After review of the information at issue and consideration of the arguments, we find Accenture has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information Accenture noted under section 552.104(a) of the Government Code. The commission must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tdw

Ref: ID# 680437

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)