



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2017

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

OR2017-23390

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# 680335 (PIR Nos. 17-5592, 17-6000, and 17-6030).

The Department of Public Safety (the "department") received three requests for three specified bid tabulations pertaining to parking lot repair. You state you do not have information responsive to a portion of the requests.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also indicate release of the submitted information may implicate the proprietary interests of SAPO Engineering Consultants; Texas Precision Paving, LLC; and Wilson Building Services, Inc. Accordingly, the department notified these third parties of the request for information and of each company's 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 Act

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-21776 (2017). In Open Records Letter No. 2017-21776, we concluded the department may withhold the submitted information under section 552.104(a) of the Government Code. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2017-21776 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2017-21776, we will address your argument against its disclosure.

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). You represent the submitted information pertains to a competitive bidding situation. In addition, you state “release of the requested information would harm [the department]’s purchasing interests and weaken the [d]epartment’s bargaining position as it deliberates options and negotiates best value now and in the future” because “competing vendors would know the prices offered by an entity selling these goods or services to the [d]epartment, which could artificially inflate prices and prevent the [d]epartment from getting [the] 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 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.

In summary, the department may continue to rely on Open Records Letter No. 2017-21776 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the submitted information under section 552.104(a) of the Government Code.

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 the necessity of

requesting a decision under section 552.301 of the Government Code. *See* Gov't Code § 552.301(a) (allowing a 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 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 680335

Enc. Submitted documents

c: 3 Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)