



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2017

Ms. Detra Whitmore
Vice President Administration
Fort Worth Transportation Authority
801 Cherry Street, Suite 850
Fort Worth, Texas 76102

OR2017-23474

Dear Ms. Whitmore:

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# 684129.

The Fort Worth Transit Authority ("FWTA") received a request for the proposal of Trillium Transportation Fuels, L.L.C. ("Trillium") for a specified project, as well as the related score sheet. FWTA does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, FWTA states, and provides documentation showing, it notified Trillium of FWTA's receipt of the request for information and of Trillium's 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 received comments from Trillium objecting to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note FWTA did not submit the requested score sheet. We assume, to the extent this information existed when FWTA received the request for information, FWTA has released it. If not, then FWTA must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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, 841 (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.* Trillium states it has competitors and argues release of the information it has indicated would cause it substantial competitive harm. Upon review, we find Trillium has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude FWTA may withhold the information that Trillium has indicated under section 552.104(a) of the Government Code.¹ FWTA 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sb

Ref: ID# 684129

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

¹As our ruling is dispositive, we do not address Trillium’s other argument to withhold this information.