



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2017

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

OR2017-24216

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# 681308 (DPS PIR # 17-5731).

The Texas Department of Public Safety (the "department") received a request for certain information pertaining to a specified project. You state some of the requested information does not exist.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the submitted information demonstrates you have notified a third party of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed 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). 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*

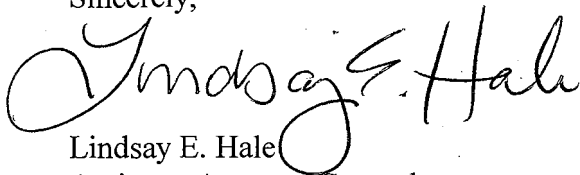
¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Co. v. Paxton, 466 S.W.3d 831, 841 (Tex. 2015). You represent the information pertains to a competitive bidding situation. 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).

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/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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 681308

Enc. Submitted documents

c: Requestor
(w/o enclosures)