



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2017

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

OR2017-24236

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# 681517 (PIR Nos. 17-5875 and 17-5894).

The Texas Department of Public Safety (the "department") received two requests for information pertaining to a specified bid. You state you have released some information to the first requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of this information may implicate the proprietary interests of Accu-Aire Mechanical, LLC; Energy Logix of Texas, LLC; Johnson Controls, Inc.; and Ways Engineering, Ltd.. Accordingly, the department provides documentation showing, it notified these third parties of the request for information and of their 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 considered the submitted argument 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 Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to a competitive bidding situation. You state release of the submitted information 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. The department argues if the information at issue is released, competing vendors would know the prices offered by an entity selling these goods or services to the department, which could artificially inflate prices and prevent the department from getting best value. After review of the submitted information and consideration of the arguments, we find the department has established 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.

Finally, 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,



D. Michelle Case
Attorney
Open Records Division

DMC/eb

Ref: ID# 681517

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

4 Third Parties
(w/o enclosures)