



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2017

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

OR2017-25717

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# 684220 (DPS PIR# 17-6422).

The Texas Department of Public Safety (the "department") received a request for a specified bid tabulation. The department claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the department indicates release of the submitted information may implicate the interests of Con10gency Consulting LLC ("Con10gency"); EVCO Partners; GSD Operations Inc.; Heartsmart.com; and One Beat cPR Learning Center. Accordingly, the department provides documentation showing it notified each third party of the request for information and of its right to submit arguments to this office as to why the submitted 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 received comments from Con10gency. We have considered the submitted arguments and reviewed the submitted information.

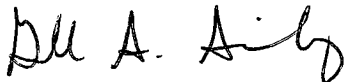
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's

information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The department represents the submitted information pertains to a competitive bidding situation. In addition, the department states release of the information at issue “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.” Further, the department contends allowing competing vendors to know the prices offered “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 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.¹

The department asks this office to issue a previous determination that would permit it to withhold bid tabulations under section 552.104 of the Government Code without requesting 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 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

¹As our ruling is dispositive, we need not address Con10gency’s argument against disclosure of the submitted information.

Ref: ID# 680337

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)