



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2017

Mr. Sam Elsass  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-26104

Dear Mr. Elsass:

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# 684228 (PIR # 17-6463).

The Texas Department of Public Safety (the "department") received a request for information pertaining to three specified bid tabulations. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We understand the release of this information may implicate the proprietary interests of Alpha Paving Industries, L.L.C. and Smith Paving. Accordingly, you provide documentation showing you notified the interested 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 exception you claim and reviewed the submitted information.

Initially, the department informs this office some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-17967 (2017). In that ruling, we concluded department may withhold the submitted information under section 552.104(a) of the Government Code. We

have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2017-17967 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 that information is or is not excepted from 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). We understand the submitted 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 reviewing the submitted information and considering your arguments, we find the department has established the release of the submitted information would give an advantage to a competitor or bidder. Accordingly, 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 information 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](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,

A handwritten signature in black ink, appearing to read 'Jahanna Ward', with a stylized flourish at the end.

Jahanna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 684228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)