



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 21, 2017

Mr. Carey E. Smith  
Senior Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711-3247

OR2017-26676

Dear Mr. Smith:

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# 685152 (ORR #20170905-13414).

The Texas Health and Human Services Commission (the "commission") received a request for all proposals, scoring documents, and evaluation materials pertaining to a specified request for proposals issued by the commission. You state the commission will release some information. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of CSG Government Solutions ("CSG"); Deloitte Consulting, LLP ("Deloitte"); and Navigant Consulting, Inc. ("Navigant"). Accordingly, you state you notified the 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 received comments from CSG and Deloitte. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Navigant explaining why the submitted information should not be released. Therefore, we have no basis to conclude Navigant has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party

must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold the submitted information on the basis of any proprietary interest Navigant may have in it.

Section 552.104(a) of the Government Code exempts 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 (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.* at 841. CSG and Deloitte each state they have competitors. In addition, CSG and Deloitte state release of the information at issue would give an advantage to their respective competitors. After review of the information at issue and consideration of the arguments, we find CSG and Deloitte have established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup> As no other exceptions have been raised for the remaining information, the commission must release it.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 685152

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)