



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2017

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

OR2017-27374

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# 686866 (ORR# 17-6854).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified project. The department claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. The department indicates release of this information may implicate the proprietary interests of AA Dollar City, LLC; Concord Commercial Services, Inc.; Heights Builders; and Nexlegacy, LLC. We understand the department notified these third parties of its receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 claimed exception 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. The department also asserts release of the submitted information “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” because it would allow “competing vendors [to] know the prices offered[.]” which it contends “could artificially inflate prices and prevent the [d]epartment from getting best value[.]” Upon review, we find the department has established the release of the information would give 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.

Although the department requests a previous determination to withhold bid tabulations under section 552.104 of the Government Code without requesting a ruling from this office, we decline to issue one 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,



James M. Graham  
Attorney  
Open Records Division

JMG/eb

Ref: ID# 686866

Enc. Submitted documents

c: Requestor  
(w/o enclosures)