



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2017

Ms. Angela Hough  
Assistant General Counsel  
North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026

OR2017-27391

Dear Ms. Hough:

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# 686315 (NTTA File No. 2017-02454, 2017-02455).

The North Texas Tollway Authority (the "authority") received two requests from different requestors for the bid tabulations pertaining to five specified requests for bids. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Arcadia Roofing Company, LLC; D&G Quality Roofing, Inc. ("D&G"); and KPost Roofing & Waterproofing. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 D&G. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note the authority has only submitted a bid tabulation pertaining to one of the specified requests for bids. To the extent any information responsive to the other four requested bids existed on the date the authority received the request, we assume the authority has released it. If the authority has not released any such information, it must do so at this

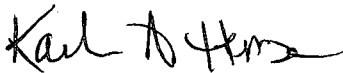
time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 submitted information pertains to a competitive bidding situation. You state the authority has not finalized and executed a contract with the winning bidder in this case. You state release of the submitted information "would place [the authority] at a competitive disadvantage in potential future negotiations." After review of the information at issue and consideration of the arguments, we find you have established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/gw

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

Ref: ID# 686315

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c 3 Third Parties  
(w/o enclosures)