



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 12, 2017

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

OR2017-28195

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# 688749 (PIR # 17-7249).

The Texas Department of Public Safety (the "department") received a request for bid tab information for four specified bid numbers. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you indicate release of the submitted information may implicate the proprietary interests of Apex Limited, Inc.; DNC Cleaning, Inc.; James Janitorial Services, LLC; The Organized Maintenance Services, Inc.; Tolden's House and Building Cleaning; and WCD Enterprises, LLC. Accordingly, you provide documentation showing you notified these 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 considered the exception you claim and reviewed the submitted information.

Initially, you state a portion 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. 2017-24509 (2017). In that ruling, we determined the department may withhold the submitted information under section 552.104 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. 2017-24509 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). You represent the submitted information pertains to competitive bidding situations. In addition, you state release of the information at issue could “artificially inflate prices and prevent the [d]epartment from getting [the] best value[.]” You argue if the information at issue is released, competing vendors would know the prices offered by an entity selling these goods or services to the department, which could artificially inflate prices and prevent the department 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.

In summary, the department may rely on Open Records Letter No. 2017-24509 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the submitted information under section 552.104(a) of the Government Code.

The department also 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. Open Records Decision No. 673 (2001). 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 "N. A. Ybarra". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/gw

Ref: ID# 688749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 6 Third Parties  
(w/o enclosures)