



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2018

Ms. L. Carolyn Nivens  
Paralegal for the City of Seabrook  
Ross, Banks, May, Cron & Cavin, P.C.  
7700 San Felipe, Suite 550  
Houston, Texas 77063

OR2018-00431

Dear Ms. Nivens:

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# 690302 (File 3957-8).

The City of Seabrook (the "city"), which you represent, received two requests for information pertaining to a specified bid project. You state you have released some information. You also state you have no information responsive to a portion of one of the requests. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Maintenance of Houston, Inc.; TexStar; Jani-King; American Janitorial services ("American"); G & S Services; San Serve Houston LLC; C & S Janitorial Services; and Royalty Commercial Care, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties the requests 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 American. We have considered the submitted arguments and reviewed the submitted information.

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) 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have 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 city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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). 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, 841 (Tex. 2015). You argue release of the submitted information would harm third parties by giving an advantage to their competitors by allowing competitors to undercut pricing. However, such an interest in protecting the information belongs to the third parties and not the city. Accordingly, the city may not withhold the submitted information based on its assertion under section 552.104(a). However, American also raises section 552.104 of the Government Code on its own behalf. In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. American states it has competitors. In addition, American states release of some of its information would provide competitors with a competitive advantage and seeks to withhold its pricing information. After review of the information at issue and consideration of the arguments, we find American has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we marked under section 552.104(a) of the Government Code.<sup>1</sup> The remaining information must be released.

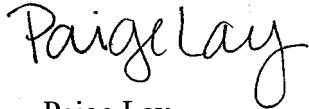
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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 cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 690302

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: 8 Third Parties  
(w/o enclosures)