



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2018

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

OR2018-02122

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# 693728 (PIR# 17-8184).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified request for offers. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the Texas Department of Insurance ("TDI") and the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's contention the department failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written

request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The department received the request for information on November 3, 2017. The department informs us it operated on a skeleton crew on November 22, 2017, and was closed on November 23, 2017, and November 24, 2017. This office does not count holidays, including skeleton crew days observed by a governmental body, as business days for the purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-and fifteen-business-day deadlines were November 17, 2017, and November 29, 2017, respectively. The department hand-delivered the information required by section 552.301(b) to this office on November 17, 2017, and hand-delivered the information required by section 552.301(e) on November 28, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the department complied with the requirements of sections 552.301(b) and 552.301(e) of the Government Code. Accordingly, we will address the department's arguments against disclosure.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 [department from getting best value[.]" Upon review, we find the department has established the release of the submitted information 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.¹

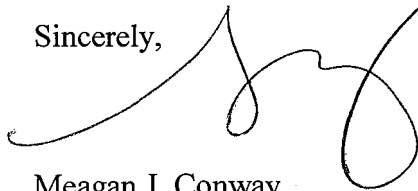
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we need not address TDI's argument against disclosure of this information.

[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 'Meagan J. Conway', with a long, sweeping underline that extends to the right across the page.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 693728

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)