



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2018

Ms. Leena Chaphekar
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2018-04662

Dear Ms. Chaphekar:

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# 697658 (ID# 2017-PIA-276).

The Employee Retirement System of Texas (the "system") received a request for a copy of a specified contract. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Weaver and Tidwell, L.L.P. Accordingly, you state you notified the third party of the request for information and of its 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 exceptions you claim 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). You represent the submitted information pertains to a competitive bidding situation. You state the system is currently evaluating

responses from qualified bidders for this type of service. You explain release of the information at issue could potentially lead to the system agreeing to less beneficial terms. After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system 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/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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 697658

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling for this information is dispositive, we need not address the remaining argument against its disclosure.