



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2019

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

OR2019-02902

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# 749093 (File No. 2018–02910).

The North Texas Tollway Authority (the “authority”) received a request for information pertaining to a specified request for proposals. The authority states it does not maintain information responsive to a portion of the request.¹ The authority claims the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of Integrated Computer Systems, Inc. (“ICS”); Mark 43, Inc. (“Mark 43”); Southern Software, Inc.; Succinct Systems NovoTrax (“NovoTrax”); and Superion. Accordingly, the authority states, and provides documentation showing, it notified these third parties of the request for information and of the 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 ICS, Mark 43, NovoTrax, and Superion. We have reviewed the submitted arguments and 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

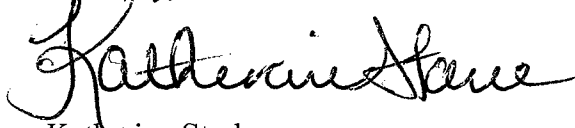
¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

“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 authority states the information at issue pertains to a competitive bidding situation in which a contract has not been executed. The authority further states “release of information related to the procurement could also 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 the authority has established the release of the 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.²

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,



Katherine Stark
Attorney
Open Records Division

KS/mo

Ref: ID# 749093

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.