



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2019

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2019-05546

Dear Mr. Toulet:

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# 753277 (ORR M025301)

The City of Midland (the "city") received a request for information pertaining to a specified request for proposals. The city claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The city also states, and provides documentation showing, it notified Prime Government Solutions of the city's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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.

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, 841 (Tex. 2015). The city informs us the submitted information consists of "bidding documents of companies [that] are seeking to obtain a contract with the [city] to provide support for the [c]ity's agenda and document management

software.” The city asserts the submitted information is excepted from release under section 552.104 because “disclosure of this information would provide the requestor with an advantage if the requestor should decide to submit a future proposal for such software support services.” Upon review, we find the city 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 submitted information under section 552.104(a) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PS/eb

Ref: ID# 753277

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)