



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2019

Ms. Melanie J. Rodney
Assistant County Attorney
Harris County
2525 Holly Hall Street, Suite 190
Houston, Texas 77054

OR2019-06214

Dear Ms. Rodney:

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# 753720 (Ref. No. 18HSP0937).

The Harris County Purchasing Department (the "department") received a request for all competitive bids submitted for a specified request for proposals.¹ Although the department takes no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Instrumentation Laboratory Company ("ILC"). Accordingly, you state, and provide documentation showing, you notified ILC of the request for information and of its right to submit arguments to this office. *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 ILC. We have considered the submitted arguments 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). 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

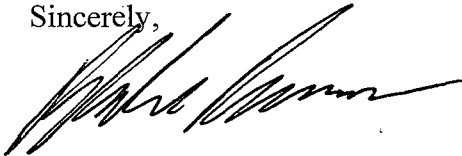
¹You state the department sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the department received the required deposit on November 29, 2018. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. ILC asserts section 552.104 for portions of its information at issue. ILC states it has competitors in the market for whole blood homeostasis testing. Further, ILC states the release of the information at issue "would place [ILC] at a significant competitive disadvantage[.]" After review of the information at issue and consideration of the arguments, we find ILC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we marked under section 552.104(a) of the Government Code.² As no exceptions have been raised for the remaining information, the department must release it.

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,



Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 753720

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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