



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2019

Mr. Dustin L. Banks
In-House Counsel
Travis Central Appraisal District
P.O. Box 149012
Austin, Texas 78714

OR2019-06265

Dear Mr. Banks:

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# 753768 (ORR Nos. 15424 & 15499).

The Travis Central Appraisal District (the "district") received two requests from different requestors for information related to any contracts for software with True Prodigy Tech Solutions, L.L.C. ("True Prodigy"). The district claims some of the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.139 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of True Prodigy. Accordingly, the district states, and provides documentation showing, it notified True Prodigy 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 True Prodigy. We have reviewed the submitted arguments and the submitted information.

Initially, True Prodigy argues the submitted information does not consist of public information subject to the Act. The Act applies to “public information,” which is defined in section 552.002(a) of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *See id.*; Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information that is written, produced, collected, assembled, or maintained by or for a governmental body may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Information is “in connection with the transaction of official business” if it is “created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body.” *Id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

True Prodigy contends the requested information is not subject to the Act because the information is a “tool for the manipulation of data.” However, we find the information was

collected, assembled, or maintained in connection with the transaction of the district's official business. Further, the district has submitted this information as being subject to the Act. Therefore, we conclude the submitted information is subject to the Act and the district must release it unless the information falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

Section 552.104(a) of the Government Code exempts 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 competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. True Prodigy states it has competitors. In addition, True Prodigy states release of the information would give an advantage to True Prodigy's competitors. True Prodigy explains release of the information at issue would allow its competitors to undercut any future bids from True Prodigy for new clients. For many years, this office concluded the terms of a contract, and especially the pricing of a winning bidder, are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find True Prodigy has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district 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 the remaining arguments against disclosure of the submitted 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 "Claire Morris Sloan". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 753768

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)