



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2019

Mr. Michael Ewing
Assistant General Counsel
Employees Retirement System
P.O. Box 13207
Austin, Texas 78711-3207

OR2019-08843

Dear Mr. Ewing:

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# 757771 (ORR# 2019-PIA-009).

The Employees Retirement System ("ERS") received a request for information related to a specified request for proposals.¹ ERS claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, ERS states release of the submitted information may implicate the proprietary interests of WageWorks. Accordingly, ERS states it notified WageWorks 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 reviewed the submitted arguments and the submitted information.

¹ERS states it received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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). ERS states release of the submitted information would harm the bidding process for future requests for proposals or applications when ERS puts these services out for bid again. After review of the information at issue and consideration of the arguments, we find ERS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude ERS 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 757771

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)