



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 26, 2019

Mr. Thomas Bailey  
Legal Services  
VIA Metropolitan Transit  
123 North Medina Street  
San Antonio, Texas 78207

OR2019-10300A

Dear Mr. Bailey:

This office issued Open Records Letter No. 2019-10300 (2019) on April 17, 2019. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 17, 2019. The request was assigned ID# 773010.

VIA Metropolitan Transit ("VIA") received two requests from different requestors for information pertaining to a specified request for proposal ("RFP"). Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Clear Channel Outdoor/San Antonio ("Clear Channel"). Accordingly, you state, and provide documentation showing, you notified the interested third party of the requests and 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 submitted on behalf Clear Channel. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted information responsive to the requested proposals submitted in response to the RFP. To the extent any information responsive to VIA's original RFP, any responses sent by VIA, scoring information, or the resulting contract

existed on the date VIA received the request, we assume VIA has released it. If VIA has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. Clear Channel states it has competitors. In addition, Clear Channel states release of this information would allow their competitors “to analyze [Clear Channel's] business strategies and use that information to develop their own plans and proposals, to [Clear Channel's] detriment.” 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 831, 839. After review of the information at issue and consideration of the arguments, we find Clear Channel has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude VIA 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](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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large initial "E".

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/gw

Ref: ID# 773010

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

c: Third Party  
(w/o enclosures)