



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2019

Ms. Hadassah Schloss
Director, Open Government
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2019-12435

Dear Ms. Schloss:

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# 764599 (GLO ID# 19-0408).

The Texas General Land Office (the "GLO") received a request for the lease and all related documents pertaining to a specified property. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the claimed exceptions 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 GLO states it has specific marketplace interests in the information at issue because it "must ensure that any transaction involving land produces the highest revenue possible." In addition, the GLO asserts release of the information it marked would disadvantage the GLO in its ability to negotiate favorable terms in future leases. We note the GLO seeks to withhold some of the terms of a contract. 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 it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 839. After review of the information at issue and consideration of the arguments, we find the GLO has established the release of the information it marked would give advantage to a competitor or bidder. Accordingly, we conclude the GLO may withhold the information it marked under section 552.104(a) of the Government Code.¹ The GLO must release the remaining information.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 764599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.