



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2019

Ms. Stephanie Storm
City Secretary's Office
City of Wylie
300 Country Club Road, # 100
Wylie, Texas 75098

OR2019-12937

Dear Ms. Storm:

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# 765326.

The City of Wylie (the "city") received a request for a specified contract and a second request from a different requestor for five categories of information, including the same specified contract. You state the city has released to the second requestor information responsive to four of the categories of her request. We understand the city takes no position with respect to whether the submitted information is excepted from disclosure; however, you state its release may implicate the interests of a third party. Accordingly, you state, and provide documentation demonstrating, the city notified Community Waste Disposal ("CWD") of the requests for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by a legal representative for CWD.

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. CWD states release of the information it has marked would provide its competitors an advantage that would enable them to undercut CWD with respect to the city and other municipalities and seeks to withhold the terms of the 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 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 CWD has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold CWD’s information, which we have marked, under section 552.104(a).¹

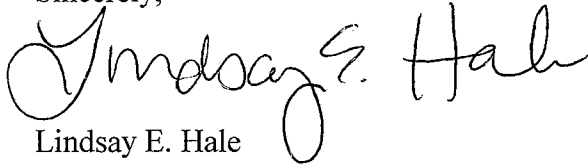
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/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

¹As our ruling is dispositive, we need not address CWD’s remaining argument against disclosure.

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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 765326

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)