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ATTORNEY GENERAL OF TEXAS

June 3, 2019

Ms. Kate Leverett
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Germer PLLC
P.O. Box 4915
Beaumont, Texas 77704

OR2019-14550

Dear Ms. Leverett:

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# 768317.

The Port of Beaumont Navigation District (the "district"), which you represent, received a request for a specified lease between the district and the Lewis Dreyfus Company Beaumont Export Elevator LLC ("LDC"). The district claims the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. The district also states release of the submitted information may implicate the proprietary interests of LDC. Accordingly, the district states, and provides documentation showing, it notified LDC of the request for information and of its 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 LDC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note LDC objects to disclosure of information the district did not submit to this office for review. This ruling does not address information that was not submitted by the district and is limited to the information the district submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, although the district argues that the information it marked is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's arguments under section 552.110.

We now address the section 552.104 arguments made by the district and LDC. 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). 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. The district states it has specific marketplace interests in the information at issue because the district competes with other port facilities in the cargo shipping industry. Both the district and LDC state they have competitors. Further, the district and LDC state release of their information at issue would provide their competitors with an advantage. The district and LDC seek to withhold 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 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 the district and LDC established release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information the district marked and the additional information we marked under section 552.104(a) of the Government Code.¹ The district 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.

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

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/mo

Ref: ID# 768317

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)