



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 13, 2019

Ms. Lisa K. Hargrove  
General Counsel  
Houston First Corporation  
701 Avenida de las Americas  
Houston, Texas 77010

OR2019-15873

Dear Ms. Hargrove:

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# 770500.

The Houston First Corporation (the "corporation") received a request for seven categories of information pertaining to two specified properties. The corporation claims the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, the corporation indicates release of this information may implicate the proprietary interests of Bud's Barbeque Company, LLC ("Bud's"); Deli Houston GRB, LLC; Landry's, Inc. ("Landry's"); Pappas Restaurants, Inc. ("Pappas"); and a named individual. Accordingly, the corporation states, and provides documentation showing, it notified these third parties of the request for information and of their 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 from Bud's, Landry's, and Pappas. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2018-31168 (2018). In that ruling, we concluded the corporation may withhold certain information under sections 552.104 and 552.107 of the Government Code and must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2018-31168 was based have changed.

Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the corporation may continue to rely on Open Records Letter No. 2018-31168 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Next, although the corporation contends some of the submitted information is excepted from disclosure 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. *See* Gov't Code § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Therefore, we do not address the corporation’s argument under section 552.110 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 corporation informs us it leases restaurant spaces on a recurring basis. The corporation argues release of the submitted information would harm and disadvantage the corporation in future tenant negotiations. 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 corporation has established the release of the submitted information would give advantage to a competitor or bidder. Accordingly, we conclude the

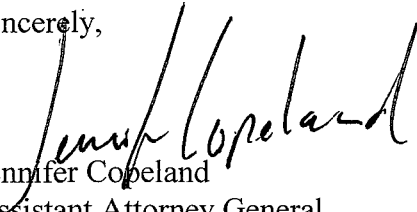
corporation may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the corporation may continue to rely on Open Records Letter No. 2018-31168 as a previous determination and withhold or release the identical information in accordance with that ruling. The corporation 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 770500

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)

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