



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 17, 2019

Ms. Karol Davidson  
Staff Attorney  
Texas Juvenile Justice Department  
P.O. Box 12757  
Austin, Texas 78711

OR2019-16352

Dear Ms. Davidson:

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# 771259 (ORR #33861).

The Texas Juvenile Justice Department (the "department") received a request for a list of vendors who were sent a particular request for offers, as well as any communications between department employees and those vendors during a particular time period. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: 22nd Century Technologies, Inc.; Accenture LLP; Ambonare, Inc.; Capgemini SE; Century Technologies, Inc.; Deloitte Consulting, LLP ("Deloitte"); McLane Group, L.P.; Resource Data, Inc.; Sense Corp; and Tribridge Holding, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 Deloitte. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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

Next, Deloitte asserts some of the submitted information is non-responsive to the present request because the communications do not pertain to the specified request for offers. However, we note the requestor seeks “any written communications” between the department and the vendors at issue. Further, we note the information at issue consists of emails between department employees and the vendors at issue. Moreover, the department has submitted these communications as information that the department deems to be responsive to this request for information. Therefore, we find the submitted information is responsive to the instant request, and we will address the arguments against its disclosure.

Next, the requestor contends the department has publicly disclosed some of the information responsive to the instant request. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov’t Code* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor does not argue the department has previously released the exact same information the department now seeks to withhold. Accordingly, we will consider the submitted arguments against disclosure of the submitted information.

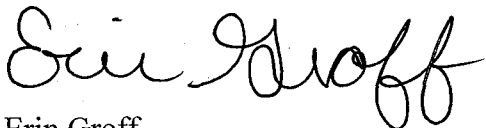
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the 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). A private third party may invoke section 552.104(a) of the Government Code. *Id.* at 833. Deloitte asserts some of its information at issue is excepted from disclosure under section 552.104 of the Government Code. Deloitte states it has competitors. In addition, Deloitte states release of the information at issue would provide an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Deloitte has established the release of its information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information at issue, which we have marked, under section 552.104(a) of the Government Code.<sup>1</sup> We understand you to argue release of the remaining information would harm the remaining interested third parties by giving an advantage to their respective competitors. However, such an interest in protecting the information belongs to these third parties and not the department. Therefore, the department may not withhold any of the remaining information under section 552.104(a) on this basis. As no further exceptions to disclosure are raised, the department 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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/be

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

Ref: ID# 771259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

10 Third Parties  
(w/o enclosures)