



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Mr. Eric C. Farrar  
Counsel for Galveston County  
Olson & Olson LLP  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2019-18574

Dear Mr. Farrar:

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# 774332 (Reference No. P190104).

Galveston County (the "county"), which you represent, received a request for the bid tabulation and the winning bidder's proposal for a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of the following third parties: Bay Oil Company; Pinnacle Petroleum, Inc. ("Pinnacle"); and Sun Coast Resources, Inc. ("Sun Coast"). 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 received comments from Pinnacle and Sun Coast. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note the submitted information includes the requestor's bid. As we assume the requestor does not seek access to the requestor's own bid, we do not address the public availability of that information.

Initially, we note the requestor only seeks the bid tabulation and the winning bidder's proposal related to the specified request for proposals. Thus, the remaining proposals, which we marked, are not responsive to the request, and the county need not release this information in response to the request.<sup>2</sup>

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice 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 the remaining third party explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 county may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third party 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). 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. Pinnacle and Sun Coast state they have competitors. In addition, Pinnacle and Sun Coast state release of their information at issue would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find Pinnacle and Sun Coast established the release of their pricing information would give advantage to a competitor or bidder. Thus, we conclude the county may withhold Pinnacle's and Sun Coast's pricing information under section 552.104(a) of the Government Code.<sup>3</sup>

In summary, the county may withhold Pinnacle's and Sun Coast's pricing information under section 552.104(a) of the Government Code. The county must release the remaining responsive information.

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<sup>2</sup>As we are able to make this determination, we need not address the arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

Ref: ID# 774332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 3 Third Parties  
(w/o enclosures)