



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Ms. LaNetra S. Lary  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2019-19096

Dear Ms. Lary:

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# 775287.

The Fort Bend County Purchasing Office (the "county") received a request for the bid tabulations, proposals, and evaluations pertaining to a specified bid for proposals. You state you do not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of CelPlan Technologies, Inc.; Gatekeeper Systems, Inc.; Point Blank Enterprises; Preferred Technologies, LLC; and Safe Fleet Bus & Rail - Seon. Accordingly, you state, and provide documentation showing, the county notified these third parties of the request for information and of the 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 considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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). You state the information at issue pertains to an ongoing competitive bidding situation in which a contract has not been awarded. In addition, you state release of the information at issue at this time could hinder the county’s ability to negotiate or renegotiate the contract terms before the execution of the contract with the winning bidder. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the county 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/be

Ref: ID# 775287

Enc. Submitted documents

c: Requestor

5 Third Parties  
(w/o enclosures)