



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Mr. J. Eric Magee
Counsel for the Lavaca County Auditor's Office
Allison, Bass, & Magee, L. L. P.
402 West 12th Street
Austin, Texas 78701

OR2019-19326

Dear Mr. Magee:

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# 775471.

The Lavaca County Auditor's Office (the "auditor's office"), which you represent, received a request for insurance policy information for a specified time period.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.² You also state release of this information may implicate the interests of the Texas Association of Counties Risk Management Pool ("TAC"). Accordingly, you state, and provide documentation showing, you notified TAC of the request for information and of its

¹You state the auditor's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²You also raise 552.110 of the Government Code for the submitted information. However, section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. See generally Open Records Decision No. 592 (1991). Accordingly, we do not consider the auditor's office's arguments under section 552.110 of the Government Code.

right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from TAC. We have also received and considered comments from the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

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 (Tex. 2015). TAC states it has competitors. In addition, TAC states release of the submitted information would give an advantage to its competitors. 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 841. After review of the information at issue and consideration of the arguments, we find TAC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the auditor’s office may withhold the submitted information under section 552.104(a) of the Government Code.³

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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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 "Deborah Southerland". The signature is stylized and cursive.

Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 775471

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)