



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Mr. Juan A. Roque
Assistant District Attorney
Bexar County Criminal District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2019-19770

Dear Mr. Roque:

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# 776213 (DA File No. 7427).

Bexar County (the "county") received two requests from different requestors for information related to a specified request for proposals, including vendor responses, scoring sheets or bid tabulations, and the final contract. Although the county takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Equivant; Journal Technologies, Inc.; MicroPact Global, Inc. ("MicroPact"); Sogeti USA ("Sogeti"); Texas Conference of Urban Counties; and Tyler Technologies. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released.¹ *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

¹You acknowledge the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

received comments from MicroPact and Sogeti. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note you have only submitted third party proposals pertaining to the request for proposals. To the extent information responsive to the remainder of the request existed on the date the county received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have 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 county may not withhold the submitted information on the basis of any proprietary interest 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). 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. MicroPact and Sogeti each state they have competitors. In addition, MicroPact and Sogeti assert release of the information at issue would cause harm to their interests and provide advantage to their competitors. After review of the information at issue and consideration of the arguments, we find MicroPact and Sogeti have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold MicroPact's and Sogeti's information under section

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

552.104(a) of the Government Code.³ As no further exceptions to disclosure have been raised, the county 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, 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/be

Ref: ID# 776213

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)

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