



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 31, 2019

Mr. Jeffrey W. Giles  
Assistant City Attorney  
City of Houston  
P. O. Box 368  
Houston, Texas 77001-0368

OR2019-20989

Dear Mr. Giles:

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# 778167 (GC No. 25944).

The City of Houston (the "city") received a request for information pertaining to a specified bid. Although the city takes no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of GCR, Inc. ("GCR").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified GCR of the request and its right to submit arguments to this office. *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 GCR. We have considered the submitted arguments and reviewed the submitted information.

GCR asserts portions of its information are protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if

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<sup>1</sup>We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider GCR's arguments against disclosure of the submitted information. *See id.* §§ 552.007, .302, .352.

released, would give advantage to a competitor or bidder.” *Id.* § 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. GCR states it has competitors. In addition, GCR states the information at issue, if released, would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find GCR has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information GCR seeks to withhold, which we marked, under section 552.104(a) of the Government Code. Accordingly, the city 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/jxd

Ref: ID# 778167

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)