



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Ms. L. Carolyn Nivens
Paralegal, Counsel for City of Seabrook
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OR2019-21615

Dear Ms. Nivens:

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# 779121 (File# 3957).

The City of Seabrook (the "city") received a request for information pertaining to bid projects solit #2019-317-02 and #2019-318-02. You state the city does not have information responsive to a portion of the request.¹ You state the city will release some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.139 of the Government Code. We have considered the exceptions you claim 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." 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 (Tex. 2015). You represent Exhibit B pertains to a competitive bidding situation. In addition, you state the city has not selected a winning

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

proposal and release of the information at issue would give advantage to a bidder in the negotiating phase of the bid process. After review of the information at issue and consideration of the arguments, we find city 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 submitted information under section 552.104(a) of the Government Code.

Section 552.139 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

...

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

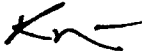
Gov't Code § 552.139(a), (b)(2). The city states Exhibit A contains "the precise locations of fiber optic cables, communication housing huts, multiple ground locations, and material summaries." Thus, the city asserts disclosure of the information at issue could jeopardize its entire system's infrastructure. Based on the city's representations and our review, we find the information at issue is confidential under section 552.139. Accordingly, the city must withhold Exhibit A under section 552.139 of the Government Code.

In summary, the city may withhold the submitted information under section 552.104(a) of the Government Code. The city must withhold Exhibit A under section 552.139 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, 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/jxd

Ref: ID# 779121

Enc. Submitted documents

c: Requestor
(w/o enclosures)