



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-26728

Dear Mr. Miles:

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# 787389 (ORR Nos. 18970 and 18973).

The Texas Health and Human Services Commission (the "commission") received two requests from different requestors for vendor proposals and responses, scoring documents, award letters, and the final contract pertaining to a specified request for proposals. Although the commission takes no position regarding whether the submitted information is excepted from disclosure under the Act, the commission informs us its release may implicate the proprietary interests of Navigant Consulting, Inc. ("Navigant").¹ Accordingly, the commission states, and provides documentation showing, it notified Navigant of the request for information and of 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 Navigant. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted Navigant's proposal in response to the requests for information. To the extent any additional information responsive to the requests existed on the date the commission received the requests, we assume the commission has released

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

it. If the commission has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. Navigant states it has competitors. In addition, Navigant explains release of the information it indicated would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Navigant established the release of the information it indicated would give advantage to a competitor or bidder. Accordingly, we conclude the commission may withhold the information Navigant indicated under section 552.104(a) of the Government Code.² The commission 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

²As our ruling is dispositive, we need not address Navigant's remaining arguments against disclosure of this information.

Ref: ID# 787389

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: Third Party
(w/o enclosures)