



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2019

Ms. Deanne Rienstra
Special Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2019-26801

Dear Ms. Rienstra:

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# 787803 (Reference No. L-25531).

The Texas Lottery Commission (the "commission") received a request for information pertaining to a named entity. You state the commission released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Pollard Bank Note Limited ("Pollard"). Accordingly, you state, and provide documentation showing, you notified Pollard of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *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 Pollard. 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." 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. Pollard states it has competitors. In addition, Pollard states release of the information at issue would cause it harm. 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 Pollard has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may withhold the information marked under section 552.104(a) of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 466.022(b) of the Government Code. Section 466.022(b) provides that the following information is confidential and exempt from disclosure:

- (1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;
- (2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers[.]

Id. § 466.022(b)(1)-(2). The commission states release of some of the remaining information, which you have marked, would compromise the lottery games and threaten the integrity and security of the operation of the lottery. The commission explains the information at issue contains information relating to lottery sales agent security, lottery operator and vendor security, and other aspects of lottery security. Based upon your representations and our review, we conclude the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 466.022(b) of the Government Code.

In summary, the commission may withhold the information marked under section 552.104(a) of the Government Code. The commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

466.022(b) of the Government Code. 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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/be

Ref: ID# 787803

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)