



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2019

Mr. Victor M. Cristales
Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2019-27231

Dear Mr. Cristales and Mr. Pittman:

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# 788393 (Reference Nos. G034996 and G035205).

The City of Frisco (the "city"), which you represent, received two requests from different requestors for information pertaining to a specified bid. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of FCS Construction, LP ("FCS"); Hammett Excavation, Inc.; Mario Sinacola & Sons Excavating, Inc.; Mid-America Golf and Landscape, Inc.; RPMx Construction; and Vilhauer. Accordingly, you state, and provide documentation showing, the city notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 FCS. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform this office the city is withdrawing its request for a ruling with respect to the second requestor because the city has released the responsive information to this requestor. This ruling does not address the public availability of information the city no longer seeks to withhold that is responsive to only the second request.

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 the information at issue pertains to a competitive bidding situation. In addition, you state release of the information could artificially inflate prices and prevent the city from getting the best value from bidders when similar requests for bids or proposals are issued by the city. After review of the information at issue and consideration of the arguments, we find you have established the release of the information 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.¹

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 788393

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)

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