



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Mr. Dustin S. Wilson  
Assistant City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710

OR2019-28281

Dear Mr. Wilson:

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# 790614 (LegalDesk #RLU-649065).

The City of Tyler (the "city") received a request for information related to two specified requests for proposals, including the proposals, supporting documents, and city scoring sheets. You state the city does not possess information responsive to a portion of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of certain third parties.<sup>2</sup> Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> The third parties notified were: AmWINS Group, Inc. ("AmWINS"); Blue Cross Blue Shield ("BCBS"); Castia RX; Cerpas RX; Citizens RX ("Citizens"); Connect Your Care, LLC ("CYC"); Continental American Insurance; Delta Dental Insurance Company ("Delta"); Discovery Benefits ("Discovery"); Envolve Pharmacy Solutions; HealthFirst TPA; Lincoln Financial; MedTrack RX; Metlife; Mutual of Omaha; Navia Benefit Solutions; OCHS, Inc.; Print Services UMR; ProAct; Total Administrative Services Corporation ("TASC"); Unum; and WellDyne RX.

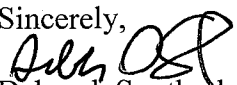
Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from AmWINS, BCBS, Citizens, CYC, Delta, Discovery, and TASC. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.104(a) of the Government Code exempts 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, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. Further, you state the city has not yet awarded the bids, nor have the contracts been executed. Moreover, you inform us release of the submitted information would “harm the [c]ity’s negotiating power and could potentially affect the costs and services of the final contract.” After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give an 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.<sup>4</sup>

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,

  
Deborah Southerland

Attorney

Open Records Division

DS/jxd

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<sup>3</sup> We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 790614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)