



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Ms. Loretta Perez
Administrative Secretary II/Public Information Coordinator
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

Mr. Benjamin Lugg
Attorney
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2019-31825

Dear Ms. Perez and Mr. Lugg:

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# 796494 (Ref. No. W002136).

The San Antonio Housing Authority (the "authority") received a request for information pertaining to a specified request for proposals. You state the authority has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ You also state you notified Alamo HR/Native Vision Group, LLC; Dependable Business Solutions

¹ Although you also raise section 552.105 of the Government Code for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

("DBS"); Howroyd-Wright Employment Agency, Inc. d/b/a AppleOne Employment Agency, Inc.; L.K. Jordan and Associates; LOD Resource Group; Remedy Intelligent Staffing; and Tri-Starr Group ("Tri-Starr") 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 DBS and Tri-Starr. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Although the authority argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the authority's argument under section 552.110.

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 state the submitted information relates to a bid for certain goods and services, which you indicate the authority will rebid in the future. You assert release of the information at issue would interfere with the authority's bargaining position and "have a negative impact on the price and/or quality of bidders the [authority] may choose from." After review of the information at issue and consideration of the authority's arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.²

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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large, prominent "E" and "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 796494

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)