



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Ms. Teresa Matlock
Records Manager/PIR Officer
Houston Firefighters' Relief and Retirement Fund
4225 Interwood North Parkway
Houston, Texas 77032-3866

OR2019-32455

Dear Ms. Matlock:

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# 797242.

The Houston Firefighters' Relief and Retirement Fund (the "fund") received a request for requests for proposals, responses, and resulting contracts relating to the election of and voting for fund board members.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Election Services Co. ("ESC"). Accordingly, you state, and provide documentation showing, you notified ESC of the request for information and of its 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 ESC. We have considered the submitted arguments and reviewed the submitted information.

¹ The fund sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Initially, ESC asserts the fund is not a governmental body subject to section 552.003(1)(A) of the Government Code, and therefore, not subject to the Act. We note the Act applies to “governmental bodies” as that term is defined in section 552.003(1)(A) of the Government Code, which includes several enumerated kinds of entities. Gov’t Code § 552.003(1)(A). Upon review, we find the fund was established by the legislative branch and is directed by one or more elected or appointed members. *See id.* § 552.003(1)(A)(i). Thus, we conclude the information at issue is subject to public disclosure, unless it is confidential or excepted from disclosure under an exception to the Act.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. ESC states it has competitors. In addition, ESC states release of this information would provide their competitors with a substantial advantage in future bidding processes. 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 831, 839. After review of the information at issue and consideration of the arguments, we find ESC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the fund may withhold the submitted information under section 552.104(a) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Emily Kunst". The signature is written in a cursive style with a large initial "E".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 797242

Enc. Submitted documents

c: Requestor
(w/o enclosures)