



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2019

Ms. Sara Hogle
Senior Buyer
Collin County
Purchasing Department
2300 Bloomdale Road, Suite 3160
McKinney, Texas 75071

OR2019-33870

Dear Ms. Hogle:

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# 803116.

Collin County (the "county") received a request for information pertaining to a specified solicitation.¹ We understand the county has released some information. 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 Buddi US, LLC ("Buddi"). Accordingly, you state, and provide documentation showing, the county notified Buddi 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 Buddi. 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). 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

¹We note the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

“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. Buddi states it has competitors. In addition, Buddi states release of portions of its information at issue would give its competitors an advantage by revealing details of Buddi’s internal operations, equipment capabilities, and data pertaining to the implementation and execution of its electronic monitoring system. After review of the information and consideration of the arguments, we find Buddi has established the release of the information at issue, which we marked, would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we marked under section 552.104(a) of the Government Code.²

We note some of the remaining information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the county may withhold the information we marked under section 552.104(a) of the Government Code. The county must release the remaining information; however, the county may only release any information subject to copyright in accordance with copyright law.

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

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² As our ruling is dispositive, we need not address Buddi’s remaining arguments against disclosure of this information.

Ms. Sara Hoglund - Page 3

Ref: ID# 803116

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)