



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2019-36133

Dear Ms. Hojem:

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# 802693 (MTA No. 2019-0831).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for six categories of information pertaining to a specified request for proposals. Although the authority takes no position regarding whether the information at issue is excepted from disclosure under the Act, the authority informs us its release may implicate the proprietary interests of Paul Alexander Company, LLC ("PAC"). Accordingly, the authority states, and provides documentation showing, it notified PAC of the request for information and of its right to submit arguments to this office. *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 PAC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the authority has not submitted information responsive to some categories of the request for information. To the extent any information responsive to these categories of the request existed on the date the authority received the request, we assume the authority has released it. If the authority has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 "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. PAC states it has competitors, including the requestor's company. In addition, PAC explains release of its information would give its competitors an advantage and would cause the company substantial competitive harm. After review of the information at issue and consideration of the arguments, we find PAC has established the release of its information would give an advantage to a competitor or bidder. Accordingly, we conclude the authority may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

Ref: ID# 802693

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address PAC's remaining arguments against disclosure of this information.