



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2020-02155

Dear Ms. Jimenez:

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# 807456 (COATTYFILE# 19-OR-152).

The Nueces County Sheriff's Office (the "sheriff's office") received a request for two specified contracts and specified commission statements. You state you do not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of some of the submitted information may implicate the proprietary interests of Keefe Commissary Network ("Keefe"). Accordingly, you state, and provide documentation showing, the sheriff's office notified the third party of the request for information and of the 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 considered the exception you claim and reviewed the submitted information.

Initially, the sheriff's office states Exhibit 2 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-22436 (2018). In that ruling, we determined the sheriff's office may withhold the submitted information under section 552.104(a) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling

¹ 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 dismissed); 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).

was based. Accordingly, the sheriff's office may rely on Open Records Letter No. 2018-22436 as a previous determination and withhold Exhibit 2 in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).


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). The sheriff's office represents Exhibit 1 pertains to a competitive bidding situation. In addition, the sheriff's office states release of the information could "be detrimental to the [sheriff's office] with future bidders for the same services." The sheriff's office further argues release of Exhibit 1 could "affect its future ability to obtain the best offer and enter into a contract with the most favorable terms possible." After review of the information at issue and consideration of the arguments, we find the sheriff's office has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the sheriff's office may withhold Exhibit 1 under section 552.104(a) of the Government Code.

In summary, the sheriff's office may rely on Open Records Letter No. 2018-22436 as a previous determination and withhold Exhibit 2 in accordance with that ruling. The sheriff's office may withhold the Exhibit 1 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,



Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 807456

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)