



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2020

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-02745

Dear Mr. Crawford:

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# 808770 (GC No. 26302).

The City of Houston (the "city") received a request for information pertaining to a specified request for proposals. The city states it will release some information to the requestor and will release or withhold some information pursuant to Open Records Letter No. 2019-28191 (2019).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 CDR Maguire, Inc. ("CDR"). Accordingly, you state, and provide documentation showing, the city 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 received comments from CDR. 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). A

¹ In Open Records Letter No. 2019-28191 this office determined the city must withhold the information we indicated under section 552.104(a) of the Government Code on behalf of Thompson Consulting Services, LLC, withhold the insurance policy numbers under section 552.136 of the Government Code, and release the remaining information. *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).

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. CDR states it has competitors. In addition, CDR states release of the information it indicated would cause substantial competitive harm because competitors could use the information to gain an unfair advantage to the detriment of CDR. Further, CDR argues release of the information at issue could be used and duplicated by competitors harming CDR’s pursuit of future opportunities in Texas or other jurisdictions. After review of the information at issue and consideration of the arguments, we find CDR has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we marked under section 552.104(a) of the Government Code on behalf of CDR.² The city must release the remaining information.

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# 808770

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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