



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 6, 2020

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2020-03543

Dear Ms. Chaphekar:

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# 810465 (PIR# 2019-PIA-240).

The Employees Retirement System of Texas (the "system") received two requests for information pertaining to request for qualifications no. 327-96149-190129. You state the system has released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>1</sup> Additionally, you state release of this information may implicate the proprietary interests of Akerman, LLP; Chapman and Cutler, LLP ("Chapman Cutler"); Clark, Hill, Strasburger; Cohen, Milstein, Sellers & Toll, PLLC; Cox, Castle & Nicholson, LLP ("CCN"); DLA Piper, LLP ("DLA Piper"); Foster Pepper, PLLC; Ice Miller, LLP ("Ice Miller"); Jackson Walker, LLP; Nixon Peabody, LLP ("Nixon Peabody"); Norton, Rose, Fulbright US, LLP; Orrick, Herrington & Sutcliffe, LLP ("Orrick"); Paul Hastings, LLP ("Paul Hastings"); Pillsbury, Winthrop, Shaw, Pittman, LLP; Proskauer Rose LLP; Reinhart Boerner Van Deuren, S.C.; and Sidley Austin, LLP. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to

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<sup>1</sup> Although you also raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See Gov't Code* § 552.110 (excepts from disclosure trade secrets or commercial financial information obtained from third party). Thus, we do not address your argument under section 552.110 of the Government Code.

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 Chapman Cutler, CCN, DLA Piper, Ice Miller, Nixon Peabody, Orrick, and Paul Hastings. We have considered the submitted arguments and reviewed the submitted information, which we understand to be a representative sample.<sup>2</sup>

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). You represent the information pertains to a competitive bidding situation. You explain disclosure of the information at issue would limit the system’s ability to attract qualified bidders and harm the system’s position in future commercial transactions when the system seeks to bid on these services again. After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.<sup>3</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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

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<sup>2</sup> We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 810465

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

18 Third Parties  
(w/o enclosures)