



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 12, 2020

Mr. Michael Ewing
Assistant General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2020-04385

Dear Mr. Ewing:

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# 811432 (ERS ID# 2019-PIA-243).

The Employees Retirement System of Texas (the "system") received a request for information pertaining to a specified request for proposals. You state you released information subject to section 552.0225 of the Government Code. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ You also state release of the submitted information may implicate the proprietary interests of Alight Solutions LLC ("Alight"). Accordingly, you state, and provide documentation showing, you notified Alight 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 Alight. 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). The

¹ 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.

“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 system states release of the submitted information would harm the bidding process for future requests for proposals or applications when the system puts these services out for bid 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.²

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 811432

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

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