



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 24, 2020

Ms. Nneka E. Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2020-05863

Dear Ms. Kanu:

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# 813190 (GC No. 26361).

The City of Houston (the "city") received a request for the industrial wastewater permit issued to a specified facility and the permit application submitted by the facility. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Valicor Environmental Services ("Valicor"). Accordingly, you state, and provide documentation showing, you notified Valicor of the request for information and of its 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 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 Valicor. We have considered the submitted arguments and reviewed the submitted information.

Valicor asserts its information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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. Valicor states it has competitors. In addition, Valicor states release of the submitted information would

give those competitors an advantage. After review of the information at issue and consideration of the arguments, we find Valicor has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the city 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,



Sean McCormick  
Attorney  
Open Records Division

SMC/gw

Ref: ID# 813190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)

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