



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 17, 2020

Ms. Hadassah Schloss  
Director, Open Government  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2020-08448

Dear Ms. Schloss:

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# 816768 (GLO ID# 20-0279).

The Texas General Land Office (the "GLO") received a request for four categories of information related to thirteen named companies during a particular period, including submissions to the GLO, awarded contracts, evaluations and investigations, and accounting information. You state you do not have information responsive to some categories of the request.<sup>1</sup> You also state the GLO has released some information, some of which was released in accordance with previous rulings from this office. *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 information is or is not excepted from disclosure). Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of James W. Turner Construction, Ltd. ("JWTC").<sup>2</sup> Accordingly, you state, and

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App., San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> We note, and you acknowledge, the GLO did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

provide documentation showing, you notified JWTC of the request and its right to submit arguments to this office. *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 JWTC. 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 private third party may assert 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. JWTC states it has competitors. In addition, JWTC argues “release of the information at issue would give competitors insight into [JWTC's] operations and the ability to achieve a distinct edge over [JWTC]” in recently submitted and future procurements. After review of the information at issue and consideration of the arguments, we find JWTC has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the GLO 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

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

Ref: ID# 816768

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)