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ATTORNEY GENERAL OF TEXAS

April 20, 2020

Mr. Robert S. Davis
Counsel for Harrison County
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701

OR2020-11426

Dear Mr. Davis:

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# 822596.

Harrison County (the "county"), which you represent, received a request for the county's insurance policy or risk pool agreement for the last two years. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state release of this information may implicate the interests of the Texas Association of Counties Risk Management Pool ("TAC"). Accordingly, you state, and provide documentation showing, you notified TAC of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from TAC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the county that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* The county seeks to withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, as information encompassed by section 552.022 may be withheld under section 552.104, we will consider TAC's argument under section 552.104 for the information at issue. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). Further, section 552.110 of the Government Code makes information confidential under the Act for purposes of section 552.022. Accordingly, we will also consider TAC's argument under section 552.110 of the Government Code for the information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a). We understand TAC to assert it has specific marketplace interests in the information at issue because it has numerous competitors in the business of insurance coverage for counties and county officials. TAC argues release of the information at issue would provide an advantage to its competitors. Based upon TAC's representations and our review, we find TAC has demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. We also find TAC has demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, the county may withhold the submitted information under section 552.104(a) of the Government Code.¹

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

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure.

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/mo

Ref: ID# 822596

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)