



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Ms. Vivian Arroyo  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2022-00534

Dear Ms. Arroyo:

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# 923045 (Ref. No. OP-21-1311).

The El Paso County Purchasing Department (the "county") received a request for all submitted proposals pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: ACH Processing Company; Certified Payments; CSG Forte Payments, Inc. ("CSG"); First Billing Services – A PAYA Company; Gila, LLC d/b/a Municipal Services Bureau ("MSB"); Government Window, LLC; NIC Services, LLC; Ontario Systems, LLC; Paymentus Corporation ("Paymentus"); and Value Payment Systems, LLC. Accordingly, you state, and provide documentation demonstrating, the county notified these interested third parties of the request for information and of their 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 CSG, MSB, and Paymentus. We have considered the submitted arguments and reviewed the submitted 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.” 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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would harm the county’s interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Accordingly, we conclude the county 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jm

Ref: ID# 923045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 10 Third Parties  
(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.