



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2022

Mr. Robert L. Spurck  
Counsel for the Sweeny Hospital District  
Reed and Claymon  
5608 Parkcrest Drive, Suite 200  
Austin, Texas 78731-4999

OR2022-11419

Dear Mr. Spurck:

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# 940659.

The Sweeny Hospital District d/b/a Sweeny Community Hospital (the "district"), which you represent, received a request for eleven categories of information related to a specified project. You state the district has released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>1</sup> Additionally, you state release of this information may implicate the proprietary interests of Tellepsen Builders, L.P. ("Tellepsen"). Accordingly, you state, and provide documentation showing, you notified Tellepsen 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 Tellepsen. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> Although the district raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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 the district has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the district may withhold the submitted information under section 552.104(a).<sup>2</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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 940659

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.