



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2022

Ms. Tiffany Bangs
County Attorney
Office of the Harris County Attorney
1019 Congress Street, 15th Floor
Houston, Texas 77002-1700

OR2022-37180

Dear Ms. Bangs:

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# 987351 (C.A. File No. 22PIA1022).

The Harris County Purchasing Agent (the "county") received a request for three categories of information pertaining to a particular request for proposals. Although the county takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Aetna Life Insurance Company ("Aetna"). Accordingly, you state, and provide documentation showing, you notified Aetna of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-05248 (2017). In that ruling, we determined the county may withhold the information at issue under section 552.104(a) of the Government Code. Although you indicate the county may be relying on Open Records Letter No. 2017-05248 to withhold some of the requested information at issue in the present request, we note the 86th Legislature has since amended section 552.104. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Therefore, the

law regarding section 552.104 has changed. Consequently, we conclude the county may not rely on Open Records Letter No. 2017-05248 as a previous determination. *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 that information is or is not excepted from disclosure).

Next, we note the county has only submitted one proposal. To the extent information responsive to the remainder of the request existed on the date the county received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the notified third party has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest the notified third party may have in the information.

We note some of the submitted information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, the county must release the requested information; however, any information protected by copyright may only be released in accordance with copyright law.

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/pt

Ref: ID# 987351

Enc. Submitted documents

c: Requestor
(w/o enclosures)