



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 16, 2022

Ms. Hannah Bell  
Assistant Criminal District Attorney  
Tarrant County Criminal District Attorney  
401 West Belknap  
Fort Worth, Texas 76196

OR2022-39278

Dear Ms. Bell:

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# 991163.

The Tarrant County Purchasing Department (the "department") received a request for information pertaining to a specified request for proposals. Although the department takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Rimkus Consulting Group, Inc. ("Rimkus"). Accordingly, you state, and provide documentation showing, you have notified Rimkus 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(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 Rimkus. We have considered the submitted arguments and reviewed the submitted information.

Rimkus contends it relied upon the department to maintain the confidentiality of its bid when submitted to the department. However, information that is subject to disclosure under the Act may not be held simply because the party submitting it anticipates or requests that it be kept confidential. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM 672 (1987); Open Records Decision Nos. 541 at 3 ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."),

203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Rimkus raises section 552.104 of the Government Code for some of their information at issue. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information 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 against in the future.” Gov’t Code § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address the arguments of Rimkus under section 552.104 of the Government Code.

Section 552.1101(a) of the Government Code provides:

Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101 of the Government Code do not apply. *See id.* § 552.0222(b). Rimkus asserts some of its information is subject to section 552.1101. Upon review, we find Rimkus has demonstrated the applicability of section 552.1101 to the information at issue. Accordingly, the department must withhold the information we marked under section 552.1101.<sup>1</sup> The department must release the remaining information.

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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/eb

Ref: ID# 991163

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address Rimkus's remaining argument against disclosure of this information.