



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2015

Ms. Molly Cost
Assistant General Counsel
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-07902

Dear Ms. Cost:

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# 561298 (PIR 15-0517).

The Texas Department of Public Safety (the "department") received a request for bidding and evaluation information pertaining to request for offers number 405-DLD-15-0000188. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state this request implicates the proprietary interests of Austin Ribbon & Computer Supplies, Inc. ("Austin Ribbon"). Accordingly, you notified Austin Ribbon of the request and of its right to submit arguments to this office explaining why its information should not be released. *See Gov't Code § 552.305; 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 considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-07043 (2015). In Open Records Letter No. 2015-07043, we concluded the department may withhold the information at issue under section 552.104 of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was

based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department may continue to rely on Open Records Letter No. 2015-07043 as a previous determination and withhold the identical information in accordance with that ruling. *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 information is or is not excepted from disclosure).

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

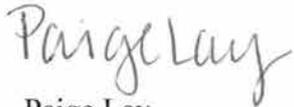
In this instance, the department states the submitted information relates to third party proposals submitted in response to a solicitation for bids that was cancelled. The department informs us that it anticipates another solicitation for this project will be issued at a later date. Because a contract has not yet been executed, the department explains release of the requested records prior to execution of a contract would harm the department’s interest in future contract negotiation. Based on these representations and our review, we conclude the department has demonstrated that release of the submitted information would harm its interests in a competitive situation. Therefore, the department may withhold the submitted information pursuant to section 552.104 of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2015-07043 as a previous determination and withhold the identical information in accordance with that ruling. The department may withhold the submitted information under section 552.104 of the Government Code.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 561298

Enc. Submitted documents

c: Requestor
(w/o enclosures)