



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 12, 2015

Ms. Kelley Messer
Assistant City Attorney
Office of the City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2015-11620

Dear Ms. Messer:

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# 567103.

The City of Abilene (the "city") received a request for information related to a specified application for ambulance service license of public convenience and necessity. You state the city has released some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Allegiance Ambulance ("Allegiance"). Accordingly, you state, and provide documentation showing, you notified Allegiance of the request for information and of its 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 reviewed the submitted information and considered the submitted argument.

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). Furthermore, section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no “competitors” for that contract. *See* Open Records Decision No. 331 (1982).

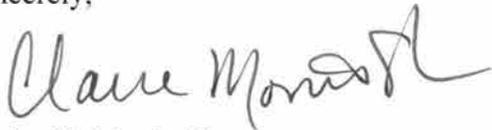
You inform us the submitted information is related to a pending application for ambulance service. You inform us the city currently has a 9-1-1 provider, but if Allegiance’s application is approved, then both companies could be 9-1-1 service providers. Thus, you inform us at the city council’s discretion, more than one ambulance company may be licensed. You argue because the city has discretion to choose among competitors, releasing this information “might give an advantage to a competitor.” However, as noted above, the city currently has a 9-1-1 ambulance service provider, and you do not inform us any service provider other than Allegiance is seeking to become an additional provider of ambulance services in the city. Thus, we find the city has not shown there is more than one “competitor” for the license at issue. Upon review, we find the city has failed to demonstrate how the release of the submitted information would affect an ongoing competitive bidding situation. Therefore, the city has failed to demonstrate the applicability of section 552.104 of the Government Code to this information, and the city may not withhold it on that basis.

Next, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Allegiance explaining why the submitted information should not be released. Therefore, we have no basis to conclude Allegiance has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Allegiance may have in the information. As no further exceptions to disclosure are raised for the submitted information, the city must release it.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 567103

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Aaron Reese
CFO/COO
Bluebird Medical Enterprises, LLC
Allegiance Ambulance
P.O. Box 2775
Georgetown, Texas 78627
(w/o enclosures)