



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2015

Mr. Dan T. Saluri
Deputy City Attorney
Office of the City Attorney
City of San Angelo
72 West College
San Angelo, Texas 76903

OR2015-21679

Dear Mr. Saluri:

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# 583422.

The City of San Angelo (the "city") received a request for a copy of the bid submitted by San Angelo Community Medical Center ("SACMC") in response to a specified request for proposals. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of SACMC. Accordingly, you have notified SACMC of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from SACMC. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the requestor's contention that he was not properly notified of the city's request for a ruling from this office as required by section 552.301(d). Pursuant to section 552.301(d) of the Government Code, a governmental body must, within ten business

days of receiving the request for information, provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general. *Id.* § 552.301(d). The city received the present request on July 27, 2015. Thus, the city's ten-business-day deadline under section 552.301(d) was August 10, 2015. We note the envelope in which the city submitted to this office the information under section 552.301(b) bears a post meter mark of August 10, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Additionally, the city's letter to this office contains a notation indicating the requestor was copied on the letter on that same date. Whether the city actually sent the requestor a copy of the city's letter to our office by August 10, 2015, is a question of fact. This office is unable to resolve factual disputes in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. As noted above, the submitted information reflects the requestor was copied on the initial letter to our office concurrent with the timely delivery to our office. Thus, we conclude the city complied with the requirements of section 552.301(d).

SACMC asserts some of its information is protected under section 552.104 of the Government Code.¹ Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, the court concluded a private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 466 S.W.3d 831 (Tex. June 19, 2015). 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." *Id.* at 841. SACMC states it has competitors. In addition, SACMC states some of its information, if released, would give advantage to a competitor, allowing the competitor to undercut SACMC by replicating SACMC's bid and for future or other similar contracts. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information

¹We note SACMC does not object to the disclosure of certain documents in its proposal, specifically, "documents which identify its providers, including the City of San Angelo Provider Directory" and the following submission forms: Conflict of Interest, Debarment and Suspension Certification, Letter of Interest, and W-9.

Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 2015 WL 3854264, at 831, 839.

After review of the information at issue and consideration of the arguments, we find SACMC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information SACMC has indicated under section 552.104(a) of the Government Code.² As no further exceptions against disclosure have been raised, the city 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 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,


Britni Ramirez
Assistant Attorney General
Open Records Division

BR/akg

Ref: ID# 583422

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the city's argument and SACMC's remaining argument against disclosure of this information.

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(w/o enclosures)