



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 22, 2015

Mr. Robert L. Blumenfeld  
Counsel for the Workforce Solutions Borderplex  
Mendel Blumenfeld, PLLC  
5809 Acacia Circle  
El Paso, Texas 79912

OR2015-22202

Dear Mr. Blumenfeld:

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# 585452.

Workforce Solutions Borderplex ("workforce solutions"), which you represent, received a request for proposals for workforce center operations and youth program operations submitted by certain third parties.<sup>1</sup> We understand you have released some information in response to this request. Although you take no position with respect to the public availability of the remaining requested information, you state release of this information may implicate the proprietary interests of Serco of Texas ("Serco"), ManpowerGroup US, Inc., and the El Paso Chamber of Commerce. Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested 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)

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<sup>1</sup>Workforce solutions informs us the requestor clarified the request for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 the circumstances). We have received comments from Serco. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from ManpowerGroup US, Inc. and the El Paso Chamber of Commerce. Thus, these third parties have not demonstrated they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, workforce solutions may not withhold the submitted information on the basis of any proprietary interests these third parties may have in the information.

Serco raises section 552.104 of the Government Code for its proposal. 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). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 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. Serco states its information consists of detailed information on service delivery strategic plans. Serco argues release of this information will allow other contractors inside information which would place Serco at a disadvantage when responding to other requests for proposals. After review of the information at issue and consideration of the arguments, we find Serco has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude workforce solutions may withhold Serco's submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

In summary, workforce solutions may withhold Serco's information under section 552.104(a) of the Government Code. The remaining information must be released.

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.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TSH/cbz

Ref: ID# 585452

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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