



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2015

Mr. W. Montgomery Meitler
Senior Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701

OR2015-22270

Dear Mr. Meitler:

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# 584324 (TEA PIR# 25178).

The Texas Education Agency (the "agency") received a request for all bids submitted in response to specified invitations for bids. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Crown Plaza Austin ("Crown Plaza"); Embassy Suites San Marcos Hotel and Conference Center ("Embassy Suites"); Hilton Austin Airport ("Hilton Airport"); Hilton 4th Street; Holiday Inn Austin Midtown ("Holiday Inn"); and, Wyndham Garden Hotel Austin ("Wyndham"). Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 Crown Plaza, Embassy Suites, Holiday Inn, and Wyndham. We have reviewed the submitted information and reviewed the submitted comments.

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 Hilton Airport or Hilton 4th Street explaining why the submitted information should not be released.

Therefore, we have no basis to conclude either Hilton Airport or Hilton 4th Street have protected proprietary interests 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. Additionally, Holiday Inn has informed this office that it has no objection to the release of its information at issue. Accordingly, the agency may not withhold the submitted information on the basis of any proprietary interest Hilton Airport, Hilton 4th Street, or Holiday Inn may have in the information.

Crown Plaza, Embassy Suites, and Wyndham all assert their financial information is excepted from disclosure under section 552.104 of the Government Code. 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, 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.

Crowne Plaza, Embassy Suites, and Wyndham state they have competitors. Crown Plaza states release of its information will hurt its competitive position. Crowne Plaza further states release of its information would show competitors its methodology and formulations for bidding and influence future bids in which Crowne Plaza is a competitor. Embassy Suites states release of its financial information would affect its future bids for contracts with the agency. Wyndham states release of its information would cause substantial harm to its competitive position moving forward. After review of the information at issue and consideration of the arguments, we find Crowne Plaza, Embassy Suites, and Wyndham have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the agency may withhold the financial information of Crowne Plaza, Embassy Suites, and Wyndham, which we have marked, under section 552.104(a).¹ The remaining submitted 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.

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 584324

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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