



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2015

Mr. Bob Davis
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-24361

Dear Mr. Davis:

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# 587772 (TDI #165115).

The Texas Department of Insurance (the "department") received a request for information pertaining to contract awarded for a specified request for proposals, a list of the organizations that responded to the request for proposals, and a copy of the winning proposal. You state you have released some information to the requestor. Although the department takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of MasterWord Services, Inc. ("MasterWord"). Accordingly, you state, and provide documentation showing, you notified MasterWord of the request for information and of the company's 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 received comments from MasterWord. We have reviewed the submitted information and the submitted arguments.

Initially, we note MasterWord objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the department and is limited to the information submitted as responsive by the department.¹ *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

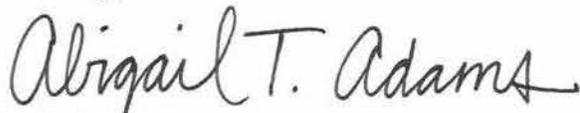
¹As we are able to make this determination, we need not address MasterWord's arguments against disclosure of the information at issue.

MasterWord claims portions of its submitted information are excepted 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.” *Id.* § 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. MasterWord states it has competitors. In addition, MasterWord states disclosure of the information at issue could allow MasterWord’s competitors to underbid MasterWord, take MasterWord’s business processes and software without the cost and effort of developing them, and pursue MasterWord’s interpreters and customers. After review of the information at issue and consideration of the arguments, we find MasterWord has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code.² The department 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

²As our ruling is dispositive, we need not address MasterWord’s remaining arguments against disclosure of the information at issue.

Ref: ID# 587772

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John C. Allen
For MasterWord Services
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(w/o enclosures)