



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Ms. Beverly West
Legal Department
Galveston County
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2015-26912

Dear Ms. West:

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# 591751.

The Galveston County Purchasing Agent (the "county") received two requests from different requestors for information related to a specified request for proposals.¹ You state you have released some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.136 of the Government Code. You also state the submitted information implicates the proprietary interests of Boon-Chapman, Corizon Health, Inc. ("Corizon"), Correct Care Solutions, Southwest Correctional Media Group, Inc., and the University of Texas Medical Branch at Galveston ("UTMB"). You state, and provide documentation demonstrating, you notified these third parties of the county's receipt 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 §§ 552.304, .305(d); see also* Open Records Decision No. 542 at 3 (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).

¹You inform us the first requestor clarified his request for information. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

We have received comments from Corizon and UTMB. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestors seek, in part, the completed agreement related to the specified request for proposals, once it is executed. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present requests consists of information the county maintained or had a right of access to as of the date it received the requests.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state Boon-Chapman was selected for a contract. However, you also state the county was in the process of negotiating the contract with Boon-Chapman when the instant requests were received. Thus, you assert if the information at issue is released, it could affect the ability of the county to negotiate the specific terms of the contract. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the submitted information under section 552.104(a) of the Government Code.²

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

²As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 591751

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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