



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 29, 2015

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2015-27174

Dear Ms. Chaphekar:

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# 592289.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to a specified request for proposals. You state you will release some information. The system claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. The system states release of this information may also implicate the proprietary interests of Ruby Media, Inc. d/b/a DHD Films. Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its 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 considered the claimed exception and reviewed the submitted information.

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 (Tex. 2015). You state release of the information at issue

would harm the system's position in contractual negotiations and commercial transactions in future bids for these types of services. After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

Ref: ID# 592289

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Mr. Hussain Manjee  
Ruby Media, Inc. d/b/a DHD Films  
2500 Farrington Street, Suite 120  
Dallas, Texas 75201  
(w/o enclosures)