



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2016

Mr. James G. Nolan
Associate Deputy General Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2016-02184

Dear Mr. Nolan:

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# 595881 (CPA ORTS# 11882137587).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining to three specified companies submitted in response request for proposals 393-G1. You state you have released some information to the requestor. Although the comptroller's office 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 Dori Foods, Inc. ("Dori"). Accordingly, you state, and provide documentation showing, you notified Dori 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 Dori. We have reviewed the submitted information and the submitted arguments.

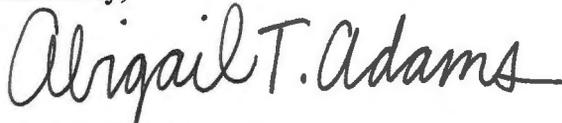
Dori claims its submitted information are excepted under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing 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. Dori states it has

competitors. In addition, Dori states disclosure of the information at issue could create an unfair advantage for its competitors on future public bids. After review of the information at issue and consideration of the arguments, we find Dori has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the comptroller's office may withhold the submitted information under section 552.104(a) of the Government Code.¹

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

Ref: ID# 595881

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Frank Baum
Dori Foods
P.O. Box 11365
Richmond, Virginia 23230
(w/o enclosures)

¹As our ruling is dispositive, we need not address Dori's remaining argument against disclosure of the information at issue.