



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 29, 2016

Ms. Kelly K. Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2016-04744

Dear Ms. Messer:

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# 600076.

The City of Abilene (the "city") received a request for the proposals submitted in response to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of PM AM Corporation ("PM AM"). Accordingly, you state, and provide documentation showing, you notified PM AM of the request for information and of its 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 PM AM. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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."

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Boeing Co. v. Paxton, 466 S.W.3d 831, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. You state the city has chosen a winning bidder, but no contract has been awarded. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information at issue 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 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# 600076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Katherine M. Dewan
Counsel for the PM AM Corporation
Snell Wylie & Tibbals
8150 North Central Expressway, Suite 1800
Dallas, Texas 75206
(w/o enclosures)

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