



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2016

Ms. Danielle Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2016-04926

Dear Ms. Folsom:

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# 600425 (Houston No. 22885).

The City of Houston (the "city") received a request for several categories of information pertaining to Houston Airport System solicitation number HBH-OCIP-2015-026. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of two third parties. Accordingly, you state, and provide documentation showing, you notified Marsh USA, Inc. ("Marsh"), and Willis of Texas, Inc. ("Willis"), of the request for information and of the companies' rights 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 exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹

¹We assume that 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.

Section 552.104(a) of the Government Code exempts 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 represent the submitted information pertains to a competitive bidding situation. In addition, you assert release of the submitted information would negatively impact negotiations between the city and the selected bidder. You further assert release of the submitted information would impact the prices future bidders offer and harm the city’s ability to obtain the lowest price possible in the current or any future related bidding process. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city 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 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# 600425

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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