



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-07106

Dear Ms. Nicholson:

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# 607282.

The City of Austin (the "city") received a request for all certification applications and award letters pertaining to N-Line Traffic Maintenance, L.P. ("N-Line"). You claim the submitted information is excepted from disclosure under section 552.128 of the Government Code. You also state release of this information may implicate the proprietary interests of N-Line. Accordingly, you state, and provide documentation showing, you notified N-Line 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 received comments from N-Line. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

N-Line asserts the submitted information is protected under section 552.104(a) of the Government Code, which 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

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.

be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. N-Line states it has competitors. In addition, N-Line states release of this information could give unfair advantage to its competitors, including the requestor. After review of the information at issue and consideration of the arguments, we find N-Line 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 607282

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Patricia England
N-Line Traffic Maintenance
P.O. Box 4750
Bryan, Texas 77805
(w/o enclosures)

²As our ruling is dispositive, we do not address the other arguments to withhold this information.