



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2016

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-08575

Dear Mr. Trevino:

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# 606305 (City PIR No. W048732).

The City of Fort Worth (the "city") received a request for information pertaining to the city's Employee Benefit Plans during a specified time period. You state you have released some information. Although you take no position on the submitted information, you state release of this information may implicate the proprietary interests of Envision Pharmaceutical Services, LLC ("Envision"). Accordingly, you state you notified Envision of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.¹ *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 Envision. We have considered the submitted arguments 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). A

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

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. Envision states it has competitors. In addition, Envision states the release of the submitted information would give an advantage to competitors. After review of the information at issue and consideration of the arguments, we find Envision 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).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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 606305

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not consider Envision’s remaining argument against disclosure.