



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Ms. Laura Garza Jimenez  
County Attorney  
County of Nueces  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2016-09379

Dear Ms. Jimenez:

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# 610325.

The Nueces County Purchasing Department (the "county") received two requests from different requestors for information pertaining to a specified request for proposals.<sup>1</sup> You state the county has released some responsive information with redactions made pursuant to 552.136(c) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Global Tel\*Link Corporation, Inmate Calling Solutions, and Securus Technologies, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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

---

<sup>1</sup>We note the county sought and received clarification of the first request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). We also note the first requestor has asked the county to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990).

<sup>2</sup>Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c).

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 the third parties. We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments slating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the requestor's contention that information believed to be similar or identical to some of the submitted information has been previously released by other states, or is publicly available on the third parties' websites. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Moreover, section 552.007 pertains to the requirements of a governmental body regarding its own previous release of information, not to the previous release of information by a different entity. Accordingly, we find section 552.007 is inapplicable to the information at issue, and we will consider the county's arguments against disclosure of this information.

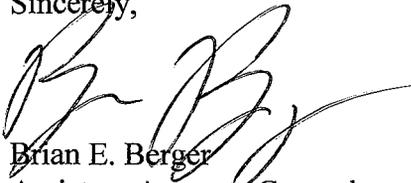
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state that, although the county has executed a contract with a third party, release of the information at issue could be detrimental to the county with respect to future bidders for the same services. In addition, you state release of this information could make future bidders less likely to present competitive submissions to the county and affect the county's future ability to obtain the best offer and enter into a contract with the most favorable terms. We note the submitted information includes the pricing information of a winning bidder. For many years, this office concluded the pricing of a winning bidder is public and generally not excepted from disclosure. Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only

ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 832. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the submitted information under section 552.104(a) of the Government Code.<sup>3</sup>

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](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# 610325

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.