



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Ms. Tiffany Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2016-10279

Dear Ms. Evans:

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# 608737 (GC No. 23125).

The Houston Airport System (the "system") received a request for three specified proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of some of the information may implicate the proprietary interests of certain third parties. Accordingly, you state you notified Alliant Insurance Services, Inc. ("Alliant"); Marsh USA, Inc.; and Willis of Texas, Inc. of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Alliant. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-07743 (2016). In that ruling, we concluded the system may withhold the information at issue under section 552.104 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2016-07743 was based

have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the system may continue to rely on Open Records Letter No. 2016-07743 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

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 information at issue pertains to a competitive bidding situation. You state the final contracts have not been awarded or approved by the city council of the City of Houston (the “city”) and the city mayor has determined to start the bidding process over. You state release of the submitted information would negatively impact negotiations between the system and the selected bidders. After review of the submitted information and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the submitted information under section 552.104(a) of the Government Code.¹

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the system may continue to rely on Open Records Letter No. 2016-07743 as a previous determination and withhold the identical information in accordance with that ruling. The system may withhold the submitted information under section 552.104 of the Government Code.

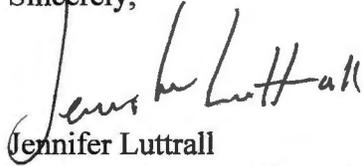
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the printed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 608737

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)