



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Ms. Lisa Calem-Lindstrom
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2016-10521

Dear Ms. Calem-Lindstrom:

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# 609218(TFC ORR# 2016-058).

The Texas Facilities Commission (the "commission") received a request for information concerning project number I 6-022-5091. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the interests of a third party. Accordingly, you notified Swinerton Builders of the request for information and of its right to submit arguments stating why its 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 considered the exceptions you claim 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). 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, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. Further, you state the commission

and the winning bidder have not yet finalized an agreement. Moreover, you inform us release of the submitted information would negatively impact the commission's ability to negotiate the contract. After review of the information at issue and consideration of the arguments, we find the commission has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the commission may withhold the submitted information under section 552.104(a).¹

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 609218

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.