



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 14, 2016

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2016-13496

Dear Ms. Chaphekar:

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# 614011.

The Employees Retirement System of Texas ("ERS") received a request for all vendor responses to a specified solicitation. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of AT&T Mobility ("AT&T") and Sprint Corporation ("Sprint"). Accordingly, you state, and provide documentation showing, you notified AT&T and Sprint of the request for information and of their right to submit arguments to this office as to why the information at issue 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 considered the exceptions claimed and reviewed the submitted information.

You argue portions of the submitted proposal are excepted from disclosure under section 552.110 of the Government Code. We note, however, section 552.110 is designed to protect the interests of third parties not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained"). Thus, we will not consider the ERS's argument under section 552.110.

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 represent the information pertains to a competitive bidding situation. In addition, you state the release of the submitted information “would harm ERS’ position in contractual negotiations and future commercial transaction.” After review of the information at issue and consideration of the arguments, we find ERS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude ERS may withhold the submitted information under section 552.104(a).

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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 614011

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)