



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2016

Ms. Kelly K. Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2016-14992

Dear Ms. Messer:

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# 622098.

The City of Abilene (the "city") received a request for information pertaining to a specified request for proposals. You state the submitted information may be excepted from disclosure under section 552.110 of the Government Code, but take no position with respect to the applicability of this exception. Rather, you state release of the submitted information may implicate the proprietary interests of Public Safety Corporation ("PSC"). Accordingly, you state, and provide documentation showing, you notified PSC of the request for information and of its 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 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 PSC. We have reviewed the submitted representative sample of information and the submitted arguments.¹

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 private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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. PSC states it has competitors. In addition, PSC states release of the information at issue would give competitors an advantage in future bids by revealing the services offered, the fees charged, and the allocation of expenses between the city and PSC. After review of the information at issue and consideration of the arguments, we find PSC 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 622098

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.