



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2016

Mr. Stanton Strickland
Associate Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2016-01992

Dear Mr. Strickland:

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# 595604 (TDI# 165420).

The Texas Department of Insurance (the "department") received a request for information relating to a specified request for offers. The department states it will release some of the requested information. The department claims the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. Additionally, the department states release of the submitted information may implicate the proprietary interests of PASCO, Inc. d/b/a Validati ("PASCO"). Accordingly, the department states, and provides documentation showing, it notified PASCO 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 PASCO. We have considered the submitted arguments and reviewed the submitted representative sample of information.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). 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). The department states the

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

submitted information pertains to a competitive bidding situation. In addition, the department states the release of the submitted information would harm the purchasing interests of the department. After review of the information at issue and consideration of the arguments, we find the department has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the department 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 595604

Enc. Submitted documents

c: Requestor
(w/o enclosures)

PASCO
c/o Mr. Jay B. Stewart
Hance Scarborough
400 West 15th Street, Suite 950
Austin, Texas 78701
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.