



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Mr. Andrew Devine
Senior Associate Attorney
Dallas County Hospital District
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2016-17108

Dear Mr. Devine:

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# 620855 (DCHD# 16-30).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for the contracts entered into in response to two specified requests for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Dr. Pepper Snapple Group ("Snapple") and SPG Vending Solutions, LLC ("SPG"). Accordingly, you state, and provide documentation showing, you notified Snapple and SPG of the request for information and of their rights 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 Snapple. We have reviewed the submitted information and the submitted arguments.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received

comments from SPG explaining why the submitted information should not be released. Therefore, we have no basis to conclude SPG has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest SPG may have in the information.

Snapple states a portion of its information is excepted from disclosure under section 552.104 of the Government Code.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 (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. Snapple states it has competitors. In addition, Snapple states release of the information it indicated would give competitors an advantage in future bids. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 832. After review of the information at issue and consideration of the arguments, we find Snapple 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 information Snapple indicated under section 552.104(a) of the Government Code.² As no further exceptions to disclosure have been raised, the system must release the remaining information.

¹Although Snapple does not raise section 552.104 of the Government Code in its brief, we understand it to raise this exception based on the substance of its arguments.

²As our ruling is dispositive, we need not address Snapple’s remaining argument against disclosure of the information at issue.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/bw

Ref: ID# 620855

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)