



KEN Paxton
ATTORNEY GENERAL OF TEXAS

August 2, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City Attorney's Office
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-17295

Dear Mr. Toulet:

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# 621284 (Request ID# 19501).

The City of Midland (the "city") received a request for information pertaining to the city's last awarded bid for gasoline and diesel fuel, including the bid tabulations, the original awarded vendors' bids, specified invoices pertaining to the current contract delivered by the city's current vendors, and corresponding bills of lading. You indicate you do not have information responsive to the portion of the request seeking bid tabulations.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception 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*

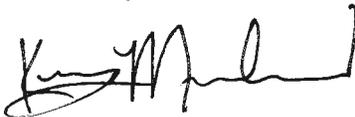
¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Co. v. Paxton, 466 S.W.3d 831 (Tex. 2015). You indicate the submitted information pertains to a future competitive bidding situation. You state “the requestor is a representative of a company that has indicated an interest in bidding on a contract with the [city] to provide gasoline and diesel fuel to the [c]ity.” In addition, you state release of the submitted information “would provide the requestor with an advantage if the requestor should decide to submit a bid to provide the [c]ity with gasoline and diesel fuel.” After review of the information at issue and consideration of the arguments, we find the city 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) of the Government Code.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 621284

Enc. Submitted documents

c: Requestor
(w/o enclosures)