



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Ms. Helen Kelley
General Counsel
Texas State Board of Plumbing Examiners
P.O. Box 4200
Austin, Texas 78765-4200

OR2016-19617

Dear Ms. Kelley:

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# 624994.

The Texas State Board of Plumbing Examiners (the "board") received a request for information related to the board's purchase of document or wide-format scanners, multi-function copiers and plotters, managed information technology services, and document management solutions, and the name and contact information for the employee who evaluates and selects technology for the board. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the proprietary interests of Canon Financial Services, Inc., and Vintage IT Services. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.104 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your argument under section 552.101.

interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and the submitted arguments.

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). The board represents the information at issue pertains to a competitive bidding situation. In addition, the board states release of the information it has marked would cause harm because it would result in less competition for its business and would interfere with the board’s ability to negotiate for the best prices for the services at issue. The board further asserts “despite the [b]oard’s contracts for these particular products and services having been awarded already, the [b]oard has an interest in preventing this information from being disclosed, since ‘knowing another bidder’s overhead costs would be an advantage’ to bidders when the [b]oard’s contracts for these products and services is [sic] re-bid in the future.” After review of the information at issue and consideration of the arguments, we find the board has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the board may withhold the information it marked under section 552.104(a) of the Government Code.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the third parties explaining why the remaining information should not be released. Therefore, we have no basis to conclude either third party 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 board may not withhold the remaining information on the basis of any proprietary interest the third parties may have in the information.

In summary, the board may withhold the information it marked under section 552.104 of the Government Code. The board must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 624994

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)