



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Mr. Andrew Heston
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2016-21157

Dear Mr. Heston:

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# 627131.

The Brazoria County Purchasing Department (the "county") received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Securus Technologies, Inc., ICSolutions, Global Tel*Link, Corp. ("GTL"), and Telmate, LLC. Accordingly, you state you notified the third parties 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 GTL. We have reviewed the submitted information and the submitted arguments.

Initially, you contend the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was

obtained. *See* Gov't Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the county's arguments under section 552.110.

Next, we note portions of the submitted information, which we have marked, were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-20678 (2016). The county now seeks to withhold this information, which was previously ordered released in accordance with copyright law, under section 552.104 of the Government Code. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the county may not now withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the county now raises section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the county may not now withhold the information at issue under section 552.104 of the Government Code. Furthermore, there is no indication the law, facts, and circumstances on which the prior ruling was based has changed. Accordingly, we conclude the county must continue to rely on Open Records Letter No. 2016-20678 as a previous determination and release the information we have marked in accordance with this ruling. *See* ORD 673. Next, we address the arguments against the disclosure of the remaining 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 Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The county represents the remaining information pertains to a competitive bidding situation. In addition, the county states release of the information at issue would expose its strategies to the advantage of competitors. We note the information at issue includes the pricing information of a winning bidder. 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 it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the remaining information under section 552.104(a) of the Government Code.¹

In summary, the county must continue to rely on Open Records Letter No. 2016-20678 as a previous determination and release the information we have marked in accordance with this ruling. The county may withhold the remaining 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 627131

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)