

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-04041
February 23, 2017

Mr. Tad Fowler
Civil Division Chief
County of Potter
500 South Fillmore Street, Room 301
Amarillo, Texas 79101

Dear Mr. Fowler:

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# 646980.

The Potter County Purchasing Agent (the "county") received a request for information related to the evaluation process of the county's law enforcement complex, including information related to general contractors. You state the county will release some of the requested information. You claim the submitted information is excepted from disclosure under [section 552.104 of the Government Code](#). Additionally, you state release of the submitted information may implicate the proprietary interests of ARCHITEXAS. Accordingly, you state, and provide documentation showing, you notified the third party 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 reviewed the submitted information and considered the submitted arguments. We have also received and considered comments from a representative of the requestor. See [Gov't Code § 552.304](#) (interested party may submit comments stating why information should or should not be released).

[Section 552.104\(a\) of the Government Code](#) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 information at issue pertains to a competitive bidding situation. In addition, the county states release of the information would cause harm because the county will be unable to gather relevant similar information going forward. The county argues release of the information would confer a competitive advantage on less desirable contractors by making it more difficult to gather information regarding such contractors' past performance. After review of the information at issue and consideration of the arguments, we find the county has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the county 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division