

Office of the Attorney General

State of Texas

Informal Letter Ruling No. OR2017-21271

September 18, 2017

Ms. Jennifer Smith  
Assistant District Attorney  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

Dear Ms. Smith:

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# 681529 (ORR# 2017-0082-DA.CO).

The Hidalgo County Public Affairs Office (the "county") received a request for information pertaining to a contract for certain banking services. The county claims the requested information is excepted from disclosure under [sections 552.104 and 552.153 of the Government Code](#). The county also states it notified interested third parties of the county's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> See [Gov't Code § 552.305\(d\)](#); see also Open Records Decision No. 542 at 3 (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 Lone Star National Bank objecting to the release of some of the information at issue. We have considered the submitted arguments 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 Co. v. Paxton, 466 S.W.3d 831 \(Tex. 2015\)](#). The county states the submitted information pertains to its current depository agreement. The county represents it periodically rebids for these services. Thus, the county asserts release of this information would provide a competitive advantage to bidders 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 the *Boeing* decision, [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 831, 839. Upon review, we find the county has established release of the information would give advantage to a competitor or bidder. Thus, the county may withhold the submitted information under [section 552.104\(a\) of the Government Code](#).<sup>2</sup>

**\*2** 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](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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

#### Footnotes

<sup>1</sup> We note the county does not inform us which interested third parties it notified.

<sup>2</sup> As our ruling is dispositive, we do not address the other arguments to withhold this information.