



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 13, 2017

Mr. Neal Falgoust
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-05177

Dear Mr. Falgoust:

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# 648757 (PIR Nos. 31379 and 31381).

The City of Austin (the "city") received two requests for information related to properties the city has purchased or plans to purchase as part of its flood buyout program. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the second requestor asks the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision Nos. 561 at 8-9 (1990), 555 at 102. You inform us that the city has made a good-faith effort to do so.

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 city states it has specific marketplace interests in the submitted information because the city is competing to buy properties at risk of flood. You note that although the city has completed some purchases, some negotiations are ongoing. In addition, the city states release of the submitted information would “damage the [c]ity’s capacity to competitively compete and negotiate sales prices for the remaining properties.” Further, the city states release of the submitted information “would diminish the intended effects of this program and endanger the ability of the [c]ity to complete other purchases by increasing the costs of the overall project.” After review of the information and consideration of the arguments, we find the city has established release of the submitted information 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.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, 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

²As our ruling is dispositive, we need not address the city’s remaining argument against disclosure.

Ref: ID# 648757

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)