



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2017

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

OR2017-07619

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# 653415 (PIR# 32095).

The City of Austin (the "city") received a request for all proposals submitted in response to a specified request for proposals, except for a named company, and for all communications between the companies that submitted proposals, except for a named company, and certain city staff. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-04667 (2017) and 2017-05069 (2017). In those rulings, we determined the city may withhold the submitted information under section 552.104(a) of the Government Code. The law, facts, or circumstances on which the prior rulings were based have not changed. Thus, the city may continue to rely on Open Records Letter Nos. 2017-04667 and 2017-05069 as previous determinations and withhold the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where

¹We assume that 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.

requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous rulings, we will address the submitted argument.

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, 841 (Tex. 2015). You state the information at issue pertains to a competitive bidding situation. Further, you state the information at issue relates to an ongoing competitive bidding process for which the city has reissued the request for proposal and is beginning another round of negotiations. You assert disclosure of the information at issue would harm the city’s competitive bidding process and hinder the city’s ability to negotiate. After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.

In summary, the city may continue to rely on Open Records Letter Nos. 2017-04667 and 2017-05069 as previous determinations and withhold the identical information at issue in accordance with those rulings. The city 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 653415

Enc. Submitted documents

c: Requestor
(w/o enclosures)