



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Mr. Stephen Whitworth
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-19293

Dear Mr. Whitworth:

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# 672416 (CSA File No. W171617-060817).

The City of San Antonio (the "city") received a request for proposals and scoring information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Alamo Cruises, LLC; Go Rio San Antonio, LLC ("Go Rio"); Mery & Associates, LLC; Rio San Antonio Cruises; and San Antonio River Cruises, Inc. ("SARC") 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 SARC and Go Rio. We received additional comments on behalf of Go Rio from Landry's Inc. *See* Gov't Code § 552.305(b); *see also* ORD 542. We have considered the submitted arguments and reviewed the submitted information.

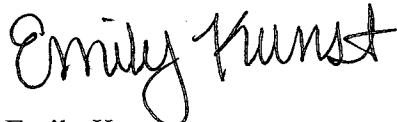
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You state the submitted information pertains to a competitive bidding situation. Further, you state the submitted

information relates to an ongoing competitive bidding process for which the city is currently negotiating, but has not yet executed, a contract. You assert disclosure of the submitted information would “disadvantage the city in its continuing negotiations . . . and in the event the negotiations are unsuccessful, in subsequent negotiations.” After review of the information at issue and consideration of the arguments, we find the city has established the 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.¹

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
Attorney
Open Records Division

EK/eb

Ref: ID# 672416

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the third parties’ arguments against disclosure.