



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2017

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

OR2017-20453

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# 674369 (COSA #W170947-060417).

The City of San Antonio (the "city") received a request for thirteen categories of information pertaining to a specified entity and specified requests for proposals.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. You also state you notified Go Rio San Antonio, LLC ("Go Rio") of the request for information and of their 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

¹You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

(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 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.

Initially, we note the requestor has asked 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 information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume 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, 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 a contract has not yet been executed. You assert disclosure of the submitted information would "disadvantage the [c]ity in its continuing negotiations with the selected concessionaire, or in the event that those negotiations are unsuccessful, in subsequent negotiations with a different proposer." 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.²

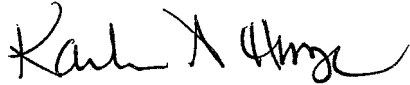
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address the city's remaining argument and the third parties' arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaelan A. Henze". The signature is fluid and cursive, with the first name "Kaelan" being the most prominent part.

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

Ref: ID# 674369

Enc. - Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)