



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2018

Ms. Karen Kennard
Counsel for Austin Convention and Visitors Bureau
d/b/a Visit Austin
Greenberg Traurig, L.L.P.
300 West 6th Street, Suite 2050
Austin, Texas 78701

OR2018-03158

Dear Ms. Kennard:

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# 695033.

The Austin Convention and Visitors Bureau d/b/a Visit Austin (the "bureau"), which you represent, received a request for several types of communications to or from named individuals during a specified time period.¹ You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

¹We note the bureau sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume the representative samples of records submitted to this office are 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. This ruling does not address the public availability of any information that is not responsive to the requests and the bureau is not required to release such information in response to this request.³

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 bureau asserts it has specific marketplace interests in the information at issue because it competes with other convention and visitors bureaus across the country to attract conventions and tourism to the City of Austin. The bureau asserts release of the information at issue would give advantage to competitors of the bureau. After review of the information at issue and consideration of the arguments, we find the bureau has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the bureau may withhold the information you marked under section 552.104(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.⁴ *See* Gov’t Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the bureau must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee at issue did not timely request confidentiality under section

³As we are able to make this determination, we need not address your arguments against disclosure of this information.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

552.024 or the cellular telephone service is paid for by a governmental body, the bureau may not withhold the information at issue under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). However, section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Additionally, section 552.137 does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818 (Tex. App.—Austin April 8, 2016, no pet.) (mem. op.). Accordingly, the bureau must withhold the personal e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release, the e-mail addresses belong to government officials who use their private e-mail addresses to conduct official government business, or subsection (c) applies.

In summary, the bureau may withhold the information you marked under section 552.104(a) of the Government Code. If the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the bureau must withhold the cellular telephone number we marked under section 552.117(a)(1) of the Government Code. The bureau must withhold the personal e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release, the e-mail addresses belong to government officials who use their private e-mail addresses to conduct official government business, or subsection (c) applies. The bureau must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'S. M. Pounds', written in a cursive style.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 695033

Enc. Submitted documents

c: Requestor
(w/o enclosures)