



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 11, 2019

Ms. Nneka Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2019-00980

Dear Ms. Kanu:

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# 745658 (GC No. 25572).

The City of Houston (the "city") received a request for certain documents pertaining to the construction of hotels or motels during a defined time period. You state the city has made some information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state the city will notify the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Texas Hospitality Group, L.L.P. We have considered the claimed exceptions and reviewed the submitted information.

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2018-28253 (2018). Accordingly, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the city may continue to rely on Open Records Letter No. 2018-28253 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information at issue in Open Records Letter No. 2018-28253, we will address your argument against its disclosure.

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 explain the information at issue relates to ongoing negotiations for the development of a hotel on the site of Partnership Tower, and final agreements have not yet been reached or approved by Houston First Corporation or city council. You state the city has specific marketplace interests in the information at issue because it is competing with other municipal corporations for similar services. In addition, you assert release of the information would enable the city’s competitors to undermine the city’s strategy during the ongoing negotiations. 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 submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city may continue to rely on Open Records Letter No. 2018-28253 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not identical to the information previously requested and ruled upon by this office, the city may withhold the submitted 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.

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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](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 that reads "Cole Hutchison". The signature is written in a cursive, flowing style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/gw

Ref: ID# 745658

Enc. Submitted documents

c: Requestor  
(w/o enclosures)