



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 3, 2019

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2019-08953

Dear Ms. Evans:

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# 757664 (GC No. 25704).

The City of Houston (the "city") received a request for communications amongst named individuals pertaining to a specified topic during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-27416 (2018). You state there has not been any change in the law, facts, or circumstances on which

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

the previous ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2018-27416 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 that information is or is not excepted from 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). The city explains 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. The city states it has specific marketplace interests in the information at issue because the city is competing with other municipal corporations for similar services. In addition, the city states release of the information would enable its 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.²

In summary, the city may continue to rely on Open Records Letter No. 2018-27416 as a previous determination and withhold or release the identical information in accordance with that ruling. The city may withhold the submitted information under section 552.104(a) of the Government Code.

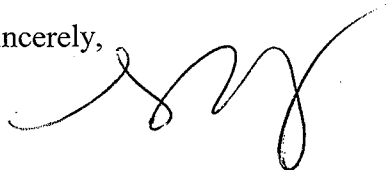
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 remaining arguments against disclosure of the information at issue.

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 'Meagan J. Conway', written in a cursive style.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/mo

Ref: ID# 757664

Enc. Submitted documents

c: Requestor
(w/o enclosures)