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ATTORNEY GENERAL OF TEXAS

June 3, 2019

Mr. Robert L. Blumenfeld
Counsel for the El Paso Housing Authority
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5809 Acacia Circle
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OR2019-14595

Dear Mr. Blumenfeld:

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# 764525 (ID# 66079400).

The El Paso Housing Authority (the "housing authority"), which you represent, received a request for information pertaining to specified real estate transactions. You state the housing authority has released some of the requested information. You claim some of the requested information is not subject to the Act. In the alternative, you claim some of the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the requested information may implicate the proprietary interests of WestStar Title ("WestStar"). Accordingly, you state the housing authority notified WestStar of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the submitted arguments and reviewed the submitted representative sample of information.

You argue a portion of the request requires the housing authority to answer questions. You also inform us that the housing authority does not have information responsive to a portion of the request. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See Economic Opportunities*

Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1, 452 at 3 (1986), 362 at 2 (1983). In this instance, we assume the housing authority has made a good faith effort to locate any information responsive to this request.

Next, the housing authority asserts some of the requested information is not subject to the Act. Section 552.002(a) of the Government Code defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party, including an individual officer or employee of a governmental body in his or her official capacity, may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The housing authority asserts the information at issue is not subject to the Act because the properties to which the real estate transactions pertain are owned by private entities and not governmental bodies as defined in the Act. However, we note the housing authority, a

governmental body, received the request for information. Further, we find the information at issue was collected and is maintained by the housing authority in connection with the transaction of official housing authority business. Accordingly, we find the information at issue is subject to the Act and must be released unless it falls within an exception to public disclosure under the Act. *Id.* §§ 552.006, .021, .301, .302.

Next, we note the housing authority has not submitted information responsive to the portion of the request seeking title policies. Although the housing authority states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the housing authority to withhold any information that is substantially different from the types of information the housing authority has submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the housing authority received the request, we assume the housing authority has released it. If the housing authority has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, although you contend the submitted information is excepted from disclosure under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Thus, we do not address your argument under section 552.110 of the Government Code. An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from WestStar explaining why the information at issue should not be released. Thus, we have no basis to conclude WestStar has a protected proprietary interest in the requested information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Therefore, the housing authority may not withhold any of the requested information on the basis of any proprietary interest WestStar may have in the information.

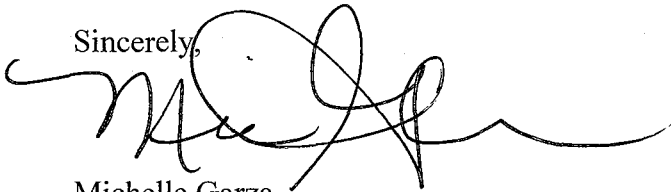
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). The

“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 explain the information you indicated pertains to an ongoing competitive bidding situation in which the housing authority is engaged in competitive negotiations with potential development partners and financing companies. You assert release of the information at issue would negatively impact current and future negotiations by providing a competitive advantage to bidders in the current and future bids. Based upon your representations and our review, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the housing authority may withhold Exhibits H and I 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 764525

c: Requestor

Third Party