



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2019

Mr. Robert L. Blumenfeld
Counsel for the El Paso Housing Authority
Mendel Blumenfeld, PLLC
5809 Acacia Circle
El Paso, Texas 79912

OR2019-15274

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# 769718.

The El Paso Housing Authority (the "housing authority"), which you represent, received a request for seven categories of financial documents pertaining to specified apartments and developments. You state the housing authority has released some of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, the housing authority asserts the submitted 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;

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

(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 submitted information is not subject to the Act because the properties to which the financial documents pertain are owned by private partnerships and not the housing authority. You explain affiliates of the housing authority act as a general partner for the partnerships owning the properties at issue. We note the housing authority received the request for information at issue. Further, the housing authority is in possession of and submitted the requested information to this office. Accordingly, we understand the housing authority maintains the submitted information for the transaction of official business. Thus, we find the submitted information 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. Therefore, we will consider the remaining arguments against disclosure of the submitted 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 state the housing authority has a procurement open for proposals for future low income or affordable housing apartments. You explain the development of affordable housing is a highly competitive industry. You state the information sought is competitively sensitive and will give an advantage to competitors during negotiations. 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 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 769718

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.