



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2019

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-27778

Dear Mr. Austria:

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# 789221 (PIR No. W087955).

The Fort Worth Police Department (the "department") received a request for three categories of information pertaining to department equipment. You state the department will rely on Open Records Letter Nos. 2015-00174 (2015), 2015-04722 (2015), 2016-02873 (2016), 2016-06744 (2016), and 2016-28305 (2016) and withhold or release some of the requested information in accordance with those rulings.¹ You also state you will redact information pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.108 of the Government Code. Additionally, you state, and provide documentation showing, you notified a third-party company of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.³ *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).

¹ *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).

² Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³ As of the date of this letter, we have not received any comments from the third-party company.

Additionally, you state you have notified the Federal Bureau of Investigation (the “FBI”) of the request.⁴ See Gov’t Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to any of the three categories of information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we marked, and the city need not release it in response to this request.

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 represent the information pertains to a competitive bidding situation. In addition, you state “[r]eleasing this information will provide a competitive advantage to competitors or bidders in future negotiations with the [city of Fort Worth (the “city”)] . . . and place the [c]ity in a competitive disadvantage.” After review of the information at issue and consideration of the arguments, we find the department has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the responsive information under section 552.104(a) of the Government Code.⁵

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/rm

⁴ As of the date of this letter, we have not received any comments from the FBI.

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 789221.

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)