



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2020

Ms. Victoria Shum
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2020-13726

Dear Ms. Shum:

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# 825358 (Ref. No. W304805).

The City of San Antonio (the "city") received a request for pro formas and financial analysis for all active incentive agreements under the Center City Housing Incentive Policy. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of several third parties.¹ Accordingly, you state the city notified the interested third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 ARDC Parkdale, Ltd. ("ARDC"); NRP Group ("NRP"); the San Antonio Housing Authority ("SAHA"); Southtown One, Ltd. ("Southtown"); and Stillwater Capital ("Stillwater"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note NRP, SAHA, and Stillwater argue against the release of information that was not submitted by the city. This ruling does not address information that was not

¹ We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider any third party arguments against disclosure of the submitted information.

submitted by the city and is limited to the information the city has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 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). SAHA raises section 552.104 of the Government Code for a portion of the submitted information. SAHA explains it is tasked with providing affordable housing to persons with limited means and frequently issues requests for proposals in order to partner with outside third parties to accomplish its mission. SAHA states and indicates it has entered into several projects with outside companies and release of the information at issue would place SAHA at a competitive disadvantage by preventing SAHA from negotiating the best terms for its contracts while still attracting developers to the city. SAHA further argues release of the information at issue, which we indicated, would interfere with SAHA’s ability to pursue its strategic goals. Based upon these representations and our review, we find SAHA has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find SAHA has demonstrated release of the information at issue, which we indicated, would give advantage to a competitor or bidder. Accordingly, the city may withhold the information we indicated under section 552.104(a).²

We understand Southtown and Stillwater to argue some of the remaining information consists of commercial or financial information subject to section 552.110(c) of the Government Code. Section 552.110(c) excepts from disclosure “commercial 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[.]” Gov’t Code § 552.110(c). Upon review, we find Southtown has demonstrated its information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold Southtown’s information under section 552.110(c) of the Government Code.³ However, we find Stillwater has failed to provide specific factual evidence demonstrating its information constitutes commercial or financial information, the release of which would result in substantial competitive harm to the company. Therefore, the city may not withhold Stillwater’s information under section 552.110(c) 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) to submit its reasons, if any, as to

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

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 letter, we have not received comments from the remaining notified third parties explaining why any of the remaining information should not be released. Therefore, we have no basis to conclude the remaining notified third parties have a protected proprietary interest in the remaining information. *See id.* § 552.110; 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. Accordingly, the city may not withhold the remaining information on the basis of any proprietary interest the remaining notified third parties may have in the information.

In summary, the city may withhold the information we indicated under section 552.104 of the Government Code. The city must withhold Southtown's information under section 552.110(c) of the Government Code. The remaining information must be released.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MG/be

Ref: ID# 825358

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)

