



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2020

Ms. Sol M. Cortez
Senior Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2020-20007

Dear Ms. Cortez:

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# 839485 (City's Case No.: 20-1044-1511).

The City of El Paso (the "city") received a request for a specified lease agreement and service contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Dahill Office Technology Corp. ("Dahill"). Accordingly, you state, and provide documentation showing, you notified Dahill of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-01938 (2019). In that ruling, we noted the city did not submit the requested bid tabulation or contract for our review, and thus, to the extent this information existed when the request was received, we assumed it had been released. If such information had not been released, then we concluded it must be released at that time. We additionally determined the city must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law. We note the Act does not permit the selective disclosure of information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its

public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the information that was previously released unless its release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. Although the city now raises section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, to the extent the submitted information was previously released in accordance with Open Records Letter No. 2019-01938, the city may not now withhold the information under section 552.104 of the Government Code. However, because section 552.136 of the Government Code can make information confidential under the Act, we will address its applicability to the submitted information.¹ To the extent the information at issue was not previously released in accordance with Open Records Letter No. 2019-01938, we will address your argument under section 552.104.

Next, we note 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Dahill explaining why its information should not be released. Therefore, we have no basis to conclude Dahill has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest Dahill may have in the information.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, to the extent the information was previously released in Open Records Letter No. 2019-01938, we find the city must withhold the bank account and routing numbers in the submitted information under section 552.136 of the Government Code.

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

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). 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 harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the city has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, to the extent the information was not previously released in Open Records Letter No. 2019-01938, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code.

In summary, to the extent the submitted information was previously released in accordance with Open Records Letter No. 2019-01938, the city must withhold the bank account and routing numbers in the submitted information under section 552.136 of the Government Code and must release the remaining information. To the extent the submitted information was not previously released in accordance with Open Records Letter No. 2019-01938, 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 <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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 839485

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)