



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 16, 2020

Ms. Alicia K. Kreh  
Counsel for the City of Kennedale  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2020-23373

Dear Ms. Kreh:

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# 845260.

The City of Kennedale (the "city"), which you represent, received a request for communications pertaining to a specified project. The city claims the submitted information is excepted from disclosure under sections 552.104, 131, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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." 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). After review of the information at issue and consideration of the arguments, we find city has established the release of the information it has highlighted in yellow under section 552.104 would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the city may withhold the information it has highlighted in yellow under section 552.104(a) of the Government Code. However, we find the city has failed to establish section 552.104 is applicable to the remaining information and may not withhold any of it on that ground.

Section 552.131(b) of the Government Code provides, “[u]nless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from” required public disclosure. Gov’t Code § 552.131(b). Upon review, we find the city has failed to demonstrate any of the remaining information reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the city may not withhold any of the remaining information under section 552.131(b) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The city does not inform us a member of the public has affirmatively consented to the release of any of the e-mail addresses it has marked in the remaining information. However, some of these e-mail addresses appear to be subject to subsection 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses the city has marked in the remaining information are not excluded by section 552.137(c) of the Government Code, the city must withhold them under section 552.137 of the Government Code. To the extent the e-mail addresses at issue are excluded by section 552.137(c), the city may not withhold them under section 552.137.

In summary, the city may withhold the information it has highlighted in yellow under section 552.104(a) of the Government Code. The city must withhold the e-mail addresses it has marked in the remaining information under section 552.137 of the Government Code, unless they are excluded by section 552.137(c) of the Government Code. The city must release the remaining information.

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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)