



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2022

Ms. Cynthia Trevino
Counsel for the City of Gonzales
Denton, Navarro, Rocha, Bernal & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2022-14310

Dear Ms. Trevino:

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# 946276 (PIA 22-078).

The City of Gonzales (the "city"), which you represent, received a request for information pertaining to certain contacts maintained by two named individuals. We understand you to claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.1175, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we understand you to assert some of the submitted information does not consist of public information that is subject to disclosure under the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) provides:

In this chapter, "public information" means 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;

(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.

Id. § 552.002(a). Section 552.002(a-1) also provides:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). 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). You assert some of the information at issue pertains to "the personal contacts for . . . former employees [of the city]." Thus, you assert such information does not relate to the transaction of official city business. We understand the limited use of city e-mail accounts for personal purposes is permissible under city policy. Based on your representations and our review, we conclude some of the information at issue, which we have indicated, does not constitute public information for the purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Accordingly, the information we have indicated is not subject to the Act and need not be released in response to the present request.¹ However, we find the remaining information at issue is maintained in connection with the transaction of official business of the city and, thus, is subject to the Act. We will consider your arguments against disclosure of the remaining information.

Section 552.104(a) of the Government Code exempts 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

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

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). You explain the remaining information consists of “contact information that was collected by [former city employees] in the performance of their assigned duties with the tourism department and the main street program[.]” You also explain the city “competes with other tourism departments and bureaus and main street programs across the area to attract tourism and business development to the [c]ity.” Thus, you assert the city has specific marketplace interests in the information at issue because it competes with other municipalities to attract tourism and business development. You argue release of the information at issue would provide a competitive advantage to the city’s competitors. Based upon your representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the city may withhold the remaining information under section 552.104(a) of the Government Code.²

In summary, the information we have indicated is not subject to the Act and the city need not release it in response to the present request. The city may withhold the remaining 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

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

Ms. Cynthia Trevino - Page 4

Ref: ID# 946276

Enc. Submitted documents

c: Requestor
(w/o enclosures)