



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2022

Ms. Victoria Hayslett
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2022-19139

Dear Ms. Hayslett:

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# 957425 (ORR# C132057).

The City of Austin (the "city") received a request for records related to esports.¹ The city claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception the city claims 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). We understand the city to argue release of the information at issue would harm its specific marketplace interests in procuring agreements with parties for use of the city's convention center. Based upon these representations and our review,

¹ The city states it sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

we find the city has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the city has established the release of the information it marked would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information it marked under section 552.104(a) 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 957425

Enc. Submitted documents

c: Requestor
(w/o enclosures)