



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2022

Ms. Lisa Biediger
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2022-31374

Dear Ms. Biediger:

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# 977615 (COSA File No. W461566-072522).

The City of San Antonio (the "city") received a request for communications and agreements between the city and XFL Properties, LLC (the "XFL") or RedBird Capital pertaining to the Alamodome. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, 552.111, and 552.131 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of the XFL. Accordingly, the city states, and provides documentation showing, it notified the XFL 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 received comments from the XFL. We have reviewed the submitted representative sample of information and considered the submitted arguments.¹

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-28748 (2022). In that ruling, we determined the city may withhold the submitted information under section 552.104 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2022-28748 as a previous determination and withhold the identical information in accordance with that ruling.² See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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). The city explains it is competing with other cities and venues for the ability to host XFL games. Therefore, the city asserts it has specific marketplace interests in the information at issue because it relates to negotiations being conducted between the city and the XFL. The city argues release of the information at issue would provide a competitive advantage to other cities by allowing them to target their bids to highlight the city’s weaknesses and undercut any future offers made by the city. Based upon these representations and our review, 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 demonstrated release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.³

In summary, the city may rely on Open Records Letter No. 2022-28748 as a previous determination and withhold the identical information in accordance with that ruling. 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.

² As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

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

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 977615

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)