



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2022

Mr. Stephen M. Foster
General Counsel
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2022-38927

Dear Mr. Foster:

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# 982566 (PIR# 2023-004).

The Texas Facilities Commission (the "commission") received a request for copies of memoranda or easements pertaining to a specified project. You state the commission has released some information. You claim the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may be the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2022-25073 (2022). In response to Open Records Letter No. 2022-25073, the commission filed a lawsuit against our office. *See Texas Facilities Comm'n v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-22-005191 (345th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.¹ However, to the extent the submitted information is not the subject of the pending litigation, we will consider the public availability of the information at issue.

We note the submitted information consists of contracts related to the expenditure of public funds. Section 552.022(a)(3) of the Government Code provides for the required public

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

disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body,” unless it is made confidential under the Act or other law. Gov’t Code § 552.022(a)(3). You seek to withhold the information at issue under section 552.105 of the Government Code. However, section 552.105 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Therefore, the commission may not withhold the submitted information under section 552.105 of the Government Code. The commission must release the submitted 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/pt

Ref: ID# 982566

Enc. Submitted documents

c: Requestor
(w/o enclosures)