



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 15, 2016

Ms. Heather Silver
Mr. Michael Bostic
Assistant City Attorneys
City of Dallas
City Hall
Dallas, Texas 75201

OR2016-18399

Dear Ms. Silver and Mr. Bostic:

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# 622508.

The City of Dallas (the "city") received a request for all text messages sent or received by the mayor on a specified day, all e-mails and text messages to or from the mayor or a named individual regarding Fair Park for a specified time period, all e-mails and text messages to or from another named individual for a specified time period, and the cellular telephone bills for the mayor and yet another named individual for a specified time period.¹ You state the city will release most information upon the payment of costs. You claim portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of PWP Landscape Architecture ("PWP"). Accordingly, you state, and provide documentation showing, you notified PWP of the request for information and of its right to submit arguments to this office as to why the information at issue 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

¹We note the city 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) (if 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).

third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from PWP. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c).

We note you have marked certain e-mail addresses within the submitted information to be withheld under section 552.137. You further state that none of the exceptions listed in section 552.137(c) are applicable to these addresses. Upon review, however, we note you have marked a personal e-mail address of the mayor. We note the submitted e-mails pertain to the transaction of official city business. Accordingly, the city may not withhold the mayor’s personal e-mail address, which we have marked for release, under section 552.137 of the Government Code *See Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818, Tex. App.—Austin, April 8, 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov’t Code § 552.137(a)). With regard to the remaining e-mail addresses you have marked, we are unable to determine whether some of these addresses are the personal e-mail addresses of city officials or employees. Therefore, we must rule conditionally. To the extent any of the remaining e-mail addresses you have marked are the personal e-mail addresses of city officials or employees, this information is not excepted from disclosure under section 552.137, and may not be withheld on that basis. To the extent any of the remaining e-mail addresses you have marked are not the personal e-mail addresses of city officials or employees, this information is excepted from disclosure under section 552.137, unless the owner of the e-mail address affirmatively consents to its release.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). In

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. PWP indicates it has competitors. In addition, PWP asserts release of its information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find PWP has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the entirety of PWP's information, which we marked, under section 552.104(a) of the Government Code.

In summary, to the city must release the personal e-mail address of the mayor, which we marked. To the extent any of the remaining e-mail addresses you have marked are not the personal e-mail addresses of city officials or employees, this information must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The city may withhold the information we 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 622508

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)