



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Ms. Nneka E. Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001

OR2016-21220

Dear Ms. Kanu:

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# 627195 (GC No. 23530).

The City of Houston (the "city") received a request for information pertaining to two specified documents and a specified e-mail thread. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted documents are not responsive to the instant request for information. We have marked these documents, which the city need not release in response to this request and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*).

Next, the requestor argues the city failed to comply with section 552.301 of the Government Code. Pursuant to subsection 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the

governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). Section 552.301(e-1) requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the request. *Id.* § 552.301(e-1).

The city received the request for information on June 30, 2016. Thus, the city's ten-business-day deadline and fifteen-business-day deadline were, respectively, July 15, 2016, and July 22, 2016.<sup>1</sup> The city's initial request for a decision to this office was timely submitted and shows it was copied to the requestor. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The requestor acknowledges receiving this initial notification and that the city's letter cited exceptions in the Act, but asserts the city failed to adequately specify which exceptions applied to the information at issue. We note that pursuant to section 552.301(b), a governmental body need only ask for a decision from this office and *state* the exceptions that apply within ten business days. *Id.* § 552.301(b) (emphasis added). Thus, we find the city complied with the procedural requirements mandated by section 552.301(d) of the Government Code. Accordingly, we will address the city's arguments against disclosure of the submitted information.

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). 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 (Tex. 2015). You state the submitted information pertains to a competitive bidding situation in which a contract with a vendor has not been awarded and negotiations regarding the contract are ongoing. You assert release of the submitted information would negatively impact the ongoing negotiations between the city and the vendor. You also state the submitted information relates to future projects for which contracts have not been awarded. In addition, you assert that in the event a contract is not

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<sup>1</sup>You inform us the city observed July 4, 2016, as a holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

awarded regarding the current negotiations, release of the responsive information would negatively impact the prices offered by future bidders and threaten the city's ability to obtain the lowest prices possible in the current and future bidding processes. Based on these representations and our review, we conclude the city has demonstrated release of the submitted information would give an advantage to a competitor or bidder. Thus, the city may withhold the submitted information under section 552.104(a) of the Government Code.<sup>2</sup>

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 627195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.