



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2016

Ms. Patricia A. Rigney
City Attorney
City of Pharr
P.O. Box 1729
Pharr, Texas 75877

OR2016-24067

Dear Ms. Rigney:

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# 632057.

The Pharr Economic Development Corporation (the "corporation") received a request for time sheets and logs for services and expenses for three specified entities. You state the corporation does not maintain information responsive to a portion of the request.¹ You state the corporation has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.110, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report that is subject to section 552.022(a)(1). The corporation must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(1) under sections 552.105, 552.111, and 552.131(b) of the Government Code. However, these exceptions are discretionary in nature and do 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), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver).* Therefore, the corporation may not withhold the submitted information under section 552.105, section 552.111, or section 552.131(b) of the Government Code. However, information encompassed by section 552.022 may be withheld under section 552.104. *See Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)).* Further, sections 552.110 and 552.131(a) of the Government Code make information confidential under the Act. Accordingly, we will consider your arguments under these exceptions 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). The corporation represents the information at issue pertains to a competitive bidding situation. The corporation states the City of Pharr (the “city”) “competes with other entities and municipalities to attract and encourage long-term residential and business grow[th].” Further, the corporation states the city has specific marketplace interests in the information at issue, and states the city will be negotiating many contracts, purchases, and deals in the foreseeable future. Thus, the corporation states release of the submitted information would place the city at a competitive disadvantage. After review of the information at issue and consideration of the arguments, we find the corporation has established the release of the information would give advantage

to a competitor or bidder. Thus, we conclude the corporation may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bhf

Ref: ID# 632057

Enc. Submitted documents

c: Requestor

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.