



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2015

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-04510

Dear Ms. Folsom:

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# 555966 (GC No. 21980).

The City of Houston (the "city") received a request for all proposals, any evaluation forms, scoring sheets, and other material documenting how each respondent was scored for a specified RFP. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also indicate release of the information may implicate the proprietary interests of third parties. Accordingly, you state you notified the third parties of the request for information and of their 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 considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted the requested proposals to this office. We assume, to the extent the evaluation forms, scoring sheets, and other material documenting how each respondent was scored existed on the date the city received the request, the city has released it. If the city has not released any such information, it must do so at this time. *See Gov't Code* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental

body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-01889 (2015). In that ruling, we concluded the city must release the submitted information in its entirety. You now seek to withhold the information previously ordered released in Open Records Letter No. 2015-01889 under section 552.104 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you now raise section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the city may not now withhold any of the previously released information under section 552.104 of the Government Code. Furthermore, you inform us the law, facts, and circumstances on which Open Records Letter No. 2015-01889 was based have not changed. Accordingly, we conclude the city must continue to rely on Open Records Letter No. 2015-01889 as a previous determination and release the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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).

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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 555966

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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