



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Mr. Marc J. Schnall
Counsel for the City of Selma
Langley & Banack, Inc.
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2015-06247

Dear Mr. Schnall:

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# 558225.

The City of Selma (the "city"), which you represent, received a request for information regarding a specified bidding process. You state the city is releasing some information to the requestor. You claim the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

Initially, you state the requestor has asked the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the city has made a good faith effort to do so.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by section 551.104 of the Open Meetings Act. Section 551.104 provides, in part, "The certified

agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c). We note the city is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or recording of a lawfully closed meeting to a member of the public. *See* Gov’t Code § 551.146(a)-(b). The city states the requested information includes a certified agenda of a closed meeting. Based on this representation, we agree the city must withhold the certified agenda of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104. The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the information you have marked in the submitted information pertains to a bidding process for properties being offered for sale by the city. You state the city council rejected the bids for the properties at issue and the city intends to make a new offer to sell these properties later in 2015. You state release of this information would adversely affect the city’s ability to obtain the maximum value for the properties in question. Based on these representations and our review, we conclude the city has demonstrated release of the submitted information could harm its interests with respect to the sale of these properties. Thus, the city may withhold the information you have marked under section 552.104 of the Government Code.

In summary, the city must withhold the certified agenda of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The city may withhold the information you have marked under section 552.104 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,

A handwritten signature in blue ink, appearing to read "Kristi L. Godden".

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 558225

Enc. Submitted documents

c: Requestor
(w/o enclosures)