



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2015

Mr. Michael Pruneda
City Attorneys
City of Pharr
P.O. Box 1729
Pharr, Texas 78577

OR2015-09806

Dear Mr. Pruneda:

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# 564175 (PIR# 2015-110).

The City of Pharr (the "city") received a request for information pertaining to two specified resolutions and a specified 380 agreement. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code. The city also states, and provides documentation showing, it notified McAllen Levcal, LLC ("Levcal") of the city's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 received comments from Levcal. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the present request because the information was created after the date the request was received by the city. The city need not release the non-responsive information we have marked in response to this request, and this ruling will not address that information.

Section 552.131 (b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). The city states the information at issue relates to financial and economic incentives being offered to a business prospect the city is seeking to have locate to the city. The city states the negotiations are still pending. Upon review, we find the information we have marked consists of information about financial or other incentives being offered to a business prospect by the city. Accordingly, the city may withhold the

information we have marked under section 552.131(b) of the Government Code. However, upon review, we find the city has not demonstrated any of the remaining information consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the remaining responsive information may be withheld under section 552.131(b).

Levcal asserts some of the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” *Id.* § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm). Upon review, we find Levcal has failed to demonstrate the release of any of its remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Therefore, the city may not withhold any of the information pursuant to section 552.110(b) of the Government Code.

Levcal also asserts some of its information is excepted under section 552.131(a)(2) of the Government Code, which reads as follows:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

...

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Id. § 552.131(a)(2). Thus, in excepting from disclosure only “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was

obtained,” section 552.131(a)(2) provides the same protection as section 552.110(b). *See id.* § 552.110(b); Open Records Decision No. 661 (1999). Therefore, as we have already determined section 552.110(b) of the Government Code is not applicable to any of the information at issue, the city may not withhold any of the remaining information under section 552.131(a)(2) of the Government Code.

In summary, the city may withhold the information we have marked under section 552.131(b) of the Government Code. The remaining responsive information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 564175

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)