



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2015

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002-0368

OR2015-10713

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# 565431 (Houston GC No. 22146).

The City of Houston (the "city") received a request for all feasibility studies conducted by or on behalf of the city during a specified period of time and related to a specified building or the proposed "justice center" or "justice complex"; and proposals submitted by the three firms that were chosen as finalists in a specified Request for Proposals. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties at issue 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.¹ *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 received comments from Plenary, Hines, and Skanska. We have

¹The third parties at issue are: AECOM Global Fund I GP, LLC and AECOM Technological Services, Inc., Honeywell International, Inc., Skanska Infrastructure Development, Inc., Skanska USA Commercial Development Inc., and Skanska USA Building Inc. (collectively "Skanska"); Plenary Edgemoor Justice Partners, LLC ("Plenary"); The Guess Group, Inc.; and Hines Interest Limited Partnership.

considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.²

Hines, Skanska, and the city raise section 552.104 of the Government Code, which excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). We will not address Hines’ or Skanska’s arguments as section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision No. 592 (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), 522 (1989) (discretionary exceptions in general). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* ORD 592. 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 requested information relates to an ongoing competitive selection process. You explain the bidding process has been cancelled, but will be revised and reinitiated in order to allow the receipt of alternate market-driven proposals. You assert disclosure of the requested information at this time would give a competitive advantage to bidders because subsequent respondents for the revised proposal will be less willing to negotiate terms in a manner favorable to the city. Based on your representations and our review, we conclude the city has demonstrated how release of the requested information would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code.³

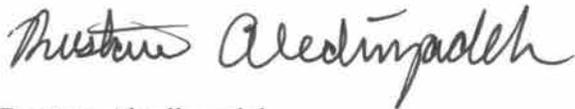
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 565431

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Authorized Representative
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Hines Interest Limited Partnership
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