



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 28, 2015

Ms. Nneka Kanu
Ms. Danielle Folsom
Assistant City Attorneys
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-18002

Dear Ms. Kanu and 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# 577402 (GC Nos. 22415, 22418, 22460, 22488).

The City of Houston (the "city") received four requests for information concerning the One Bin For All proposal and the Bloomberg Philanthropies Foundation. You claim that 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 the submitted information may implicate the interests of Abengoa Bioenergy of Texas, L.L.C. ("Abengoa"); ACS Industrial Services, Inc.; Cascadia Consulting Group, Inc.; EcoHub-Houston, L.L.C.; Envision Waste Services, L.L.C.; Ineos Bio; Mid Atlantic Solid Waste Consultants; Mustang Renewable Power Ventures ("Mustang"); OWR; Republic Services ("Republic"); and WCA Waste Corporation. Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Abengoa, Republic, EcoHub-Houston, ACS, and Mustang. We have also received comments from one of the requestors. *See* Gov't Code

§ 552.304 (permitting a person to submit written comments to attorney general during open records ruling process). We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

We note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-19848 (2014). In Open Records Letter No. 2014-19848, we determined the city may withhold the information at issue under section 552.104 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed.² Accordingly, the city may continue to rely on Open Records Letter No. 2014-19848 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2014-19848.

Section 552.104 of the Government Code exempts from required public 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*, No. 12-1007, 2015 WL 3854264, at *9 (Tex. June 19, 2015).

You state the submitted information relates to an ongoing competitive bidding process for creation of the One Bin For All Program. You state the procurement process for the One Bin For All Program is currently in the request for proposals stage based on the results from the initial request for qualifications. You state the city has not publicly announced the final award, the City Council has not approved any contract, and the city is in negotiations with the lowest bidder. You argue release of the requested information would be competitively disadvantageous for the city because proposers would be less likely to present competitive submissions and less willing to negotiate terms in a manner favorable to the city. In addition, you state "release of the information at issue would present a clear threat of harm to the [c]ity's ability to obtain the lowest price and most favorable terms possible."

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

²Although a recent case addressing section 552.104 has changed our office's application of the exception, *see Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015) (holding section 552.104 applies to both the government and private parties and may be invoked by either), that change does not affect the conclusion this office reached under section 552.104 for the information at issue.

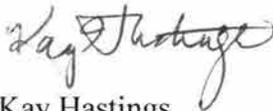
After review of the information at issue and consideration of the arguments, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city may withhold the remaining information under section 552.104(a).³

In summary, the city may continue to rely on Open Records Letter No. 2014-19848 as a previous determination and withhold the identical information in accordance with that ruling. The city may withhold the remaining information at issue under section 552.104(a) of the Government Code.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 577402

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³In light of this conclusion, we need not address your remaining claims.

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