



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Mr. Ryan M. Leach  
Executive Director  
Downtown Redevelopment Authority  
909 Fannin, Suite 1650  
Houston, Texas 77010

OR2015-22074

Dear Mr. Leach:

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# 583997.

The Downtown Redevelopment Authority (the "authority") received a request for 19 categories of information pertaining to two specified properties. You state the authority does not have information responsive to portions of the request.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code.<sup>2</sup> Additionally, you state release of some of the requested information may implicate the proprietary interests of Ayrshire; CityCentre One d/b/a Midway ("Midway"); DC Partners, LLC; PM Realty Group; Rider Levett Bucknall LTD. ("RLB"); Wulfe & Company; Younan Properties, Inc.; and YPI 1010 Lamar, LLC ("YPI"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you raise section 552.305 of the Government Code as an exception to disclosure, we note section 552.305 is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305.

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 on behalf of Midway, RLB, and YPI. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). We note a private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. The authority represents the information it seeks to withhold under section 552.104 pertains to a competitive bidding situation. In addition, the authority states a competitive bidding situation is currently ongoing, and the authority is considering submitted proposals. Additionally, Midway and RLB state they have competitors. Midway asserts release of its information would give other potential bidders or competitors an unfair advantage. RLB asserts release of its information would put the company at a disadvantage. After review of the information at issue and consideration of the arguments, we find the authority, Midway, and RLB have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we indicated under section 552.104(a).<sup>3</sup>

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov’t Code § 552.105. We note this provision is designed to protect a governmental body’s planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has held that section 552.105 applies to leases as well as purchases of real estate. *See* Open Records Decision No. 348 (1982). A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” Open Records Decision

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Nos. 357 at 3, 222 (1979). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564. You state the authority entered into a Memorandum of Understanding for the purpose of facilitating a Request for Qualifications for the properties at issue. You inform us the authority entered into this agreement to find a developer for the sale and development of the properties at issue. We understand the authority has made a good-faith determination release of the information at issue would impair the authority's negotiation position in regard to the properties at issue. Upon review of your argument and the information at issue, we find the authority may withhold the information we indicated under section 552.105 of the Government Code.

Section 552.131 of the Government Code relates to economic development information and provides, in part:

(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:

(1) a trade secret of the business prospect; or

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. There has been no demonstration by a third party that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See* ORDs 661 at 5-6, 552 at 5. Thus, the authority may not withhold any of the remaining information at issue under section 552.131(a) of the Government Code.

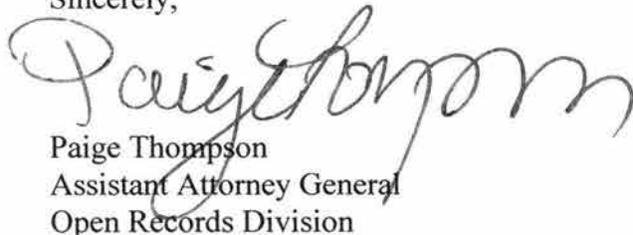
Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). You state the information at issue relates to an ongoing economic development project and the terms agreed to during a request for qualifications process. However, upon review, we find you have not demonstrated how any of the information at issue consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the remaining information at issue may be withheld under section 552.131(b) of the Government Code.

In summary, the authority may withhold the information we indicated under sections 552.104(a) and 552.105 of the Government Code. The authority 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](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 Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 583997

Enc. Submitted documents

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