



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 25, 2016

Ms. Elaine Nicholson  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2016-01784

Dear Ms. Nicholson:

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# 595452.

The City of Austin (the "city") received a request for information pertaining to prospective tenants of the Austin [re]Manufacturing Hub (the "hub"). You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 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 interested third parties 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. *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 one of the interested third parties. We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 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*, 466 S.W.3d 831, 841 (Tex. 2015).

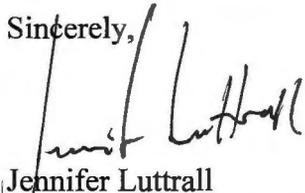
You represent the information pertains to a competitive bidding situation. You explain the city is conducting an effort to identify potential tenants and raise their interest in relocating

to the city or expanding an existing presence in the city. You further explain one specific focus of this effort is the hub, the future home of an eco-industrial park for recycling and reuse companies. You state, through the city's recruitment process, firms were notified that the city was accepting Letters of Interest for relocation and expansion to the hub. You explain the city is currently negotiating with the firms and receiving solicited offers and no lease has been executed. You assert disclosure of the submitted information would harm the city's position in negotiations, erode the advantage the city has gained toward locating these firms at the hub, and endanger the resulting investment, employment, and recycling infrastructure the city would receive. 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 the city may withhold the submitted information under section 552.104(a).

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 595452

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

23 Third Parties  
(w/o enclosures)