



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2016

Ms. Sandra D. Garcia
Assistant General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2016-08618

Dear Ms. Garcia:

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# 606248.

Houston Community College (the "college") received a request for a specified brief given to the college's Board of Trustees on a specified date. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the college's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The college received the request for information on January 26, 2016. Thus, your ten-business-day deadline was February 9, 2016. Although you raised sections 552.104 and 552.107 of the Government Code within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.105 of the Government Code until after the ten-business-day period had passed. Thus, the college failed to comply with section 552.301 of the Government Code with respect to your claim under section 552.105 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 191 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you claim section 552.105 of the Government Code for the submitted information, section 552.105 is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as a result, section 552.105 does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions), 564 (1990) (statutory predecessor to section 552.105 protects governmental body's interest and is subject to waiver). Accordingly, the college may not withhold any portion of the submitted information under section 552.105. However, we will consider your timely-raised claims under sections 552.104 and 552.107 of the Government Code.

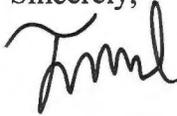
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the information you have marked Exhibits C-1 and C-2 relates to the pending sale of parcels of land owned by the college. You inform us the proposed sales had not been executed as of the date the college received the instant request. You argue release of the information at issue would undermine the college's negotiation process because the college's “ability to receive favorable offers and/or negotiations would be greatly hampered.” After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the college may withhold Exhibits C-1 and C-2 under section 552.104(a) of the Government Code.¹

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.

¹As our ruling is dispositive, we need not address your remaining argument 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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is written in a cursive, flowing style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 606248

Enc. Submitted documents

c: Requestor
(w/o enclosures)