



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2016

Mr. Evaristo Garcia Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2016-12195

Dear Mr. 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# 612165 (PIR Nos. W021486-030816 and W021510-03116).

The City of McAllen (the "city") received two requests from the same requestor for information pertaining to a specified concert, e-mails concerning a specified topic, and certain checks issued by the city. You state you will release some information. You state the city has no information responsive to a portion of one of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, and 552.111 of the Government Code. You also state you notified Creative Artists Agency ("CAA") of the request for information and of its 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 CAA. We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-05179 (2016). In Open Records Letter No. 2016-05179, we determined the city may withhold the submitted information under section 552.104(a) of the Government Code. You state the law, facts, or circumstances upon which the prior ruling was based have not changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2016-05179 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. 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). The city states it competes with other entities to attract and encourage long-term business growth. The city states it has specific marketplace interests in the submitted information. Further, the city states it will be negotiating similar contracts in the foreseeable future and release of the submitted information would place the city at a competitive disadvantage in procuring such contracts. After review of the submitted information and consideration of the arguments, we find the city has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold any remaining information not subject to Open Records Letter No. 2016-05179 under section 552.104(a) of the Government Code.²

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2016-05179 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. The city may withhold any remaining information 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.

²As 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 612165

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)