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ATTORNEY GENERAL OF TEXAS

June 6, 2016

Mr. Marc J. Schnall
Counsel for the City of Selma
Langley & Banack Incorporated
745 East Mulberry, Suite 900
San Antonio, Texas 78212

OR2016-12784

Dear Mr. Schnall:

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# 612829.

The City of Selma (the "city"), which you represent, received a request for bids submitted to the city during a specified bidding process. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city asserts section 552.103 of the Government Code for Exhibit B-1, which the city states it previously released to the requestor. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the city raises section 552.103 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the city may not now withhold the information it has previously released

to the requestor under section 552.103; instead, the city must release Exhibit B-1 pursuant to section 552.007 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 (Tex. 2015). The city represents Exhibit B-2 pertains to a competitive bidding situation. In addition, the city informs us it previously accepted bids for the purchase of certain parcels of city property. The city informs us it rejected these bids but still anticipates selling these properties. The city argues release of Exhibit B-2 will adversely impact the city receiving the highest bids for such property when these properties are offered for sale. The city further argues release of this information could result in bidder collusion and lower future bids. 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 Exhibit B-2 under section 552.104(a) of the Government Code.¹

In summary, the city may withhold Exhibit B-2 under section 552.104(a) of the Government Code. The city 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, 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 612829

Enc. Submitted documents

c: Requestor
(w/o enclosures)