



CITY OF HOUSTON

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January 28, 2019

The Honorable Ken Paxton
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

Re: Public Information Act request received on January 4, 2019, from Susan Chadwick for the proposal/contract/memorandum of understanding relating to the golf course and tournament in Memorial Park. **GC No. 25707.**

Dear General Paxton:

This is a follow-up to my letter dated January 18, 2019 (**Exhibit 1A**). The City of Houston (the "City") received the above-referenced request on January 4, 2019. The City notes that Monday, January 21, 2019 was observed as a City holiday. By copy of this letter, the City is informing the requestor that the City believes the responsive information (**Exhibits 2, 3, and 4**) is excepted from public disclosure under section 552.104 of the Government Code and subject to third party interests.

Section 552.104 of the Government Code

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. See Open Records Decision No. 593 (1991) (construing statutory predecessor). 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). Additionally, your office has stated that the statutory predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same goods or services on a recurring basis. Open Records Decision No. 541 (1990).

Your office has also held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. See Op. Tex. Att'y Gen. No. ORD-593 (1991). First, the governmental body must demonstrate that it has specific marketplace interests. See *id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. See *id.* at 5. Thus, the

question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. See *id.* at 10; see also Op. Tex. Att'y Gen. No. OR2016-05179 (2016).


The responsive information (**Exhibits 2, 3, and 4**) relates to negotiations that were ongoing at the time the request was received. The information relates to the proposed development of a golf course and tournament in Memorial Park. The information includes recommendations, analysis of the facilities, plans, specifications, and other items used by the City as part of the negotiation process. The requested information indicates the City's position and would be of value to interested parties. At the time the request was received, negotiations between the parties were ongoing and final agreements had not been signed or approved by City Council. The City believes if the responsive information (**Exhibits 2, 3 and 4**) is released, it would harm the City's attempts to obtain the best offer and conditions for the golf course and tournament in Memorial Park by providing competing parties the competitive advantage of knowing what the City will accept, what it will concede, and its plan for achieving its objectives for the proposed development of the golf course and tournament in Memorial Park. Not only would it have interfered with the negotiations, disclosure of the information would also jeopardize other future negotiations by placing the City in a disadvantaged position before discussions have commenced. Further, release of the information in **Exhibits 2, 3 and 4** would provide competing municipal corporations information regarding incentives that could enable them to undermine the City's strategy during negotiations. Therefore, the City believes the information at issue in **Exhibits 2, 3, and 4** is excepted from public disclosure pursuant to section 552.104 of the Government Code.

Section 552.305 of the Government Code

Exhibits 3 and 4 contain third party information and the City has notified the third parties whose proprietary information has been requested, that in order to protect their information from public disclosure, they must submit to your office legal briefing justifying the withholding of the information. See **Exhibits 3A and 4A**, which are not part of the requested information. The City will not raise any arguments on behalf of any third party.

The City respectfully requests a ruling on this matter. Please do not hesitate to contact me at 832-393-6491 if you need additional information. Please include **GC No. 25707** in any future correspondence concerning this request.

Sincerely,



Tiffany N. Evans
Assistant City Attorney

TNE/naj

Enclosure(s)

cc: Susan Chadwick
Sent via electronic mail to: sbb@savebuffalobayou.org
(w/o Exhibits)

Alan Bernstein, MYR
(w/o Exhibits)