

constitutionality of Texas statutes, including the PIA. Defendant Ken Paxton is sued only in his official capacity as Attorney General for the State of Texas. Plaintiff requests the Clerk of the Court issue citation so that he may be served with citation at the Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701, by certified mail, return receipt requested in accordance with the TEX. CIV. PRAC. & REM. CODE § 30.004.

II. JURISDICTION AND VENUE

3. This court has jurisdiction over this matter in accordance with the Texas Uniform Declaratory Judgments Act, Section 37.001 *et. seq.* of the TEX. CIV. PRAC. & REM. CODE and the PIA, Sections 552.3215 and 552.325 of the TEX. GOV'T CODE.

4. Venue is proper in Travis County under Section 15.002(a)(3) of the TEX. CIV. PRAC. & REM. CODE and Section 552.3215 of the TEX. GOV'T CODE.

III. DISCOVERY CONTROL PLAN

5. Plaintiff intends discovery, if necessary, be conducted under TEX. R. CIV. P. 190.3 (Level 2).

IV. NOTICE UNDER SECTION 552.325(B) OF THE PIA

6. In accordance with Section 552.325(b) of the PIA, in the course of filing this suit against the Attorney General, the Plaintiff will make a timely, good faith effort to inform the requesters of the following:

- a. The existence of the suit, including the subject matter and cause number of the suit (once assigned) and the court in which the suit is filed;
- b. Their right to intervene in the suit or to choose to not participate in the suit;
- c. The fact that the suit is against the Attorney General in Travis County District Court; and

- d. The address and phone number of the Office of the Attorney General.

The notice will be provided to requestors by certified mail, return receipt requested as shown in Exhibits A and A-1, attached.

7. Plaintiff will also provide notice of the existence of this suit, including the subject matter and cause number of the suit (once assigned) and the Court in which the suit is filed to the City of San Antonio, who serves as the governmental body in receipt of the open records request at issue.

V. BACKGROUND

8. On February 20, 2023, WWE received notice from the City of San Antonio (the “City”) of a public information request from Mr. Brandon Thurston, the author of a wrestling blog called *Wrestlenomics*, which reports on professional wrestling, including financial information and statistics for WWE’s events. The request sought “public records relating to [the] WWE Royal Rumble,” including information about attendance, sales, and communications between the City and WWE. *See* Exhibit B, ¶ 4.

9. The City timely objected to the disclosure of the Agreement, and on April 28, 2023, the Office of the Attorney General published an Open Records Letter excepting the document from disclosure under Section 552.104(a) of the PIA (attached as Exhibit C). *See* Exhibit B, ¶ 5; Tex. Att’y Gen. OR2023-14569.

10. On October 12, 2023, WWE received notice from the City of another public information request. *See* Exhibit B, ¶ 6. This second requester sought documents and communications concerning “[a]ll bids, requests for proposals, contracts and agreements” related to the WWE and the City’s venues from 2015 to the present, and all complaints regarding the

WWE from 2015 to the present. *See id.* This request is now moot, as it was seeking information in connection to a lawsuit which has now settled. *See id.*

11. In response, the City submitted an objection on October 19, 2023 and the WWE submitted an objection on November 17, 2023, through outside counsel Jennifer Oliver. *See* Exhibit B, ¶¶ 7–8. WWE’s brief argued that two exceptions to the PIA apply to the contested documents in this case: Section 551.110, which pertains to confidentiality of trade secrets and certain commercial or financial information; and Section 551.1101, which pertains to confidentiality of proprietary information. *See* Exhibit B, ¶ 8. The brief explained that the Agreement constitutes a trade secret under 552.110 because it contains “proprietary information of the WWE,” which (1) would advantage competitors if released, (2) the WWE has taken reasonable measures to keep secret, and (3) has independent economic value in not being known, or easily ascertainable, by competitors. *See id.* It further explained that the relevant documents should be excepted under 552.1101 because they deal with the WWE’s approach to pricing, discounts, organizational structure, internal operations, and more as a vendor. *See id.*

12. On January 17, 2024, the Office of Attorney General issued OR2023-14569A, reversing its April 28, 2023, letter and requiring disclosure (attached as Exhibit C-1). The next day, the office issued another Open Records Letter with the same conclusion. (attached as Exhibit C-2). The Attorney General’s first ruling, OR2023-14569, was correct and its subsequent reversal should be overturned.

13. The Agreement is exempt from disclosure under Section 552.110 of the TEX. GOV’T CODE. Section 552.110 exempts trade secrets from disclosure. The Act defines trade secrets as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Tex. Gov. Code. § 551.110(a).

14. The contents of the Agreement fall under the PIA’s definition of a trade secret. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958) (“A trade secret may consist of any . . . compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”). WWE has taken extensive measures, including the filing of this lawsuit, to keep the secret information in the Agreement a secret. *See* Exhibit B, ¶ 10. And the trade secrets in the Agreement derive significant value, both actual and potential, from being secret. Further, this information—including the WWE’s proposed percentage splits, fees, estimated value and economic impact, negotiated waivers of costs and reimbursements, and comparables—constitutes commercial and financial information, excepted from disclosure under Section 552.110(c). *See id.*

15. The Agreement is also exempt from disclosure under Section 552.1101 of the TEX. GOV’T CODE, which protects the confidentiality of proprietary information. This Section exempts “information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor” if the party can demonstrate that disclosure would “(1) reveal an individual approach to: (A) work; (B) organizational structure; (C) staffing; (D) internal operations; (E) processes; or (F) discounts, pricing methodology, pricing per kilowatt hour, or other pricing information that will be used in future solicitation or bid documents; and (2) advantage a competitor.”

16. The contents of the Agreement are proprietary as defined by the PIA. The Agreement details the names of individual WWE employees and, as noted above in Paragraph 14, information about the WWE's pricing methodology, internal operations, and negotiated terms, among other things.

VI. REQUEST FOR DECLARATORY JUDGMENT

17. Plaintiff re-alleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

18. Plaintiff asserts a claim for declaratory relief pursuant to Chapter 37 of the TEX. CIV. PRAC. & REM CODE. An actual, justiciable controversy exists among Plaintiff and Defendant concerning the rights of Plaintiff under the PIA to exempt from disclosure in response to the open records request the confidential, proprietary, and trade secret information contained within the Agreement. Such information is exempt from disclosure under the PIA, and Plaintiff accordingly asks the Court to enter a declaration that its disclosure is prohibited under TEX. GOV'T CODE § 552.110(b)-(c) or other law.

VII. INJUNCTIVE RELIEF

19. Based on the facts and circumstances pleaded herein, Plaintiff seeks temporary and permanent injunctive relief preventing the disclosure of the Agreement and any disclosure for substantially similar requests pending or received and prohibiting all appropriate government agencies, including but not limited to the City and the Attorney General's Office, from any enforcement of the PIA pending the outcome of these proceedings and after such proceedings which may be inconsistent with the court's action in this case.

VIII. CONDITIONS PRECEDENT

20. All conditions precedent to the claims and relief sought herein have been waived, have been performed, and/or have occurred. *See* TEX. R. CIV. P. 54.

IX. RESERVATION OF RIGHTS

21. Plaintiff specifically reserves the right to bring additional causes of action against Defendant and amend this Original Petition as necessary.

X. PRAYER

22. WHEREFORE, Plaintiff respectfully requests that Defendant be cited to appear and answer, and that on final hearing Plaintiff have judgment and the Court issue an order declaring:

- a. The Attorney General incorrectly determined that the Confidential Agreement should be produced;
- b. The Attorney General incorrectly applied the law regarding the definitions and exceptions of the PIA;
- c. The Confidential Agreement (and all information contained therein) is excepted from disclosure under the PIA;
- d. Plaintiff has a compelling reason to keep the documents at issue excepted from public disclosure because the Agreement, among other things, includes Plaintiff's trade secrets; and
- e. Granting Plaintiff such other relief to which it is shown to be entitled, together with attorney's fees and costs.

Dated: February 16, 2024

Respectfully submitted,

HOLLAND & KNIGHT LLP

/s/ Tricia R. DeLeon
Tricia R. DeLeon
State Bar No. 24005885
tricia.deleon@hklaw.com

Abigail E. Schultz
State Bar No. 24125063
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1722 Routh Street, Suite 1500
Dallas, Texas 75201
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Vanessa Alejandra Suarez
State Bar No. 24118548
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98 San Jacinto Boulevard Suite 1900
Austin, Texas 78701
Telephone: (512) 472-1081

**ATTORNEYS FOR PLAINTIFF,
WORLD WRESTLING
ENTERTAINMENT LLC**

Exhibit A

Holland & Knight

One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, TX 75201 | T 214.964.9500 | F 214.964.9501
Holland & Knight LLP | www.hklaw.com

Tricia R. DeLeon
+1 214-964-9420
Tricia.DeLeon@hklaw.com

February 16, 2024

Via e-mail (bhthurston@gmail.com)

Brandon Thurston
Wrestlenomics
[REDACTED]
Buffalo, NY [REDACTED]

*Re: World Wrestling Entertainment, LLC v. Ken Paxton, Attorney General of Texas;
Cause No. XX*

Dear Mr. Thurston:

Please be aware that World Wrestling Entertainment, LLC (“WWE”) has filed the above-styled suit in the ___ Judicial District Court of Travis County. The suit challenges a decision of Ken Paxton, Attorney General of Texas, under Chapter 552 of the Texas Government Code. The decision relates to your January 28, 2023, request for public information to the City of San Antonio (the “City”).

The City requested a decision from the Attorney General about whether some of WWE’s information that the City considered potentially responsive to your request, was exempted from mandatory public disclosure under Chapter 552. This request was assigned identification number 055519. WWE responded and objected to disclosure of a certain document: a contract between the City and WWE (the “Agreement”). WWE explained the Agreement is excepted from disclosure because it contains proprietary and trade secret information.

On January 17, 2024, the City received the Attorney General’s revised decision, number OR2023-14569A, concluding that the WWE information was subject to public disclosure and should be disclosed in response to your open records request under Chapter 552.

In the above titled case, WWE sues for judgment determining that the Agreement is excepted from required public disclosure despite the Attorney General’s decision to the contrary.

February 16, 2024

Page 2

This case is only against the Attorney General. You have a right not to participate in the case, but you also have the right to intervene if you wish.

The Attorney General's street address is 300 W. 15th Steet, Austin, Texas 78701. His mailing address is P.O. Box 12548, Austin, Texas 78711. And his phone number is (512) 463- 2100.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script that reads "Tricia R. DeLeon". The signature is written in black ink on a white background.

Tricia R. DeLeon

Exhibit A-1

Holland & Knight

One Arts Plaza, 1722 Routh Street, Suite 1500 | Dallas, TX 75201 | T 214.964.9500 | F 214.964.9501
Holland & Knight LLP | www.hklaw.com

Tricia R. DeLeon
+1 214-964-9420
Tricia.DeLeon@hklaw.com

February 16, 2024

Via e-mail (lyaverian@intelligenceoptions.com)

Lara Yaverian
Intelligence Options LLC
1061 First Avenue #2A
New York, NY 10019

*Re: World Wrestling Entertainment, LLC v. Ken Paxton, Attorney General of Texas;
Cause No. XX*

Dear Ms. Yaverian:

Please be aware that World Wrestling Entertainment, LLC (“WWE”) has filed the above-styled suit in the ___ Judicial District Court of Travis County. The suit challenges a decision of Ken Paxton, Attorney General of Texas, under Chapter 552 of the Texas Government Code. The decision relates to your September 27, 2023, request for public information to the City of San Antonio (the “City”).

The City requested a decision from the Attorney General about whether some of WWE’s information that the City considered potentially responsive to your request, was exempted from mandatory public disclosure under Chapter 552. This request was assigned identification number 23-093955. WWE responded and objected to disclosure of a certain document: a contract between the City and WWE (the “Agreement”). WWE explained the Agreement is excepted from disclosure because it contains proprietary and trade secret information.

On January 18, 2024, the City received the Attorney General’s revised decision, number OR2024-001838, concluding that the WWE information was subject to public disclosure and should be disclosed in response to your open records request under Chapter 552.

In the above titled case, WWE sues for judgment determining that the Confidential Letter is unrelated to your request and is excepted from required public disclosure despite the Attorney General’s decision to the contrary.

February 16, 2024

Page 2

This case is only against the Attorney General. You have a right not to participate in the case, but you also have the right to intervene if you wish.

The Attorney General's street address is 300 W. 15th Steet, Austin, Texas 78701. His mailing address is P.O. Box 12548, Austin, Texas 78711. And his phone number is (512) 463- 2100.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script that reads "Tricia R. DeLeon". The signature is written in black ink on a white background.

Tricia R. DeLeon

Exhibit B

CAUSE No. _____

WORLD WRESTLING
ENTERTAINMENT, LLC,

Plaintiff,

v.

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS

Defendant.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

DECLARATION OF CHRIS LEGENTIL

1. My name is Chris Legentil. My date of birth is May 6, 1893. My work address is 707 Washington Boulevard, Stamford, Connecticut 06901. I am of sound mind and competent in all respects to make this declaration. I declare under penalty of perjury that the following is true and correct.

2. The facts set forth in this declaration are true and correct. The facts set forth in this declaration are within my personal knowledge based upon my position as Senior Vice President and Head of Communication for World Wrestling Entertainment, LLC (“WWE”) and are also within my knowledge based upon my review of our records on this matter.

3. WWE is a media organization and sports entertainment provider. WWE’s programming provides year-round content to over one billion homes worldwide. One of these programs is the annual Royal Rumble, a premier professional wrestling event. WWE selected San Antonio to host the Royal Rumble in 2017 and 2023 after a highly competitive process involving a number of other national venues.

4. On February 20, 2023, the City of San Antonio (the “City”) sent a letter to John

Porco, WWE's then-Executive Vice President of Live Events, informing us of a public information request over which the City planned to assert exceptions to disclosure in a request to the Attorney General. This request, which the letter contained as an attachment, was submitted by Brandon Thurston on January 28, 2023, and sought copies of "public records relating to WWE Royal Rumble live event that takes place tonight (January 28, 2023) at the Alamodome, including records related to: attendance of spectators; ticket sales; reconciliation of ticket sales, merchandise sales, or other sales; communications with World Wrestling Entertainment (WWE) regarding the planning of the event." Mr. Thurston writes a blog called *Wrestlenomics*, which publishes information about the WWE and other professional wrestling organizations.

5. The Attorney General's Office issued an Open Records Letter on the First Request on April 28, 2023. *See* Tex. Att'y Gen. OR2023-14569. The decision allowed the City to "withhold the submitted information under section 552.104(a)," including our License Agreement for the 2023 Royal Rumble held in the Alamodome (the "Agreement").

6. On October 12, 2023, the City sent us another notice, informing us that a second requestor sought records pertaining to WWE. This second requestor sought information on the WWE as part of a lawsuit which has since settled, so this request is moot. The request sought:

(1) All bids, requests for proposals, contracts and agreements concerning World Wrestling Entertainment, Inc. ("WWE") or its subsidiaries, including Event Services, Inc., relating to its leasing or use of venues located in San Antonio, Texas, including the Alamodome, from 2015 to present, including but not limited to WWE Royal Rumble events. (2) All documents, emails, memos, or other communications relating to the above bids, requests for proposals, contracts or agreements from 2015 to present. (3) All documents or communications concerning any complaints regarding WWE from 2015 to the present.

7. The City opposed disclosure, writing to the Office of the Attorney General on

October 19, 2023, that the Agreement, along with other documents containing similar information, should be excepted from disclosure for numerous reasons because they would advantage the city's competitors or other bidders in competitions to host "WWE events and other high-profile events at the Alamodome." The City also argued that the documents "are protected from release by the [Attorney General's] prior determination."

8. On November 17, 2023, our outside counsel submitted a brief to the Office of the Attorney General in support of the City's objections to disclosure for the Agreement and related documents. Our objections are based on Sections 552.110, which pertains to trade secrets, and 552.1101, which pertains to proprietary information, of the Texas Public Information Act. Our brief argued that the Agreement contains information we have taken efforts to keep secret that, if released, would advantage our competitors, and which has independent economic value to us in not being known or easily ascertainable by competitors.

9. The Agreement contains WWE trade secrets that we have intentionally kept secret as sensitive and competitively advantageous information about our internal practices and negotiations with venues. This internal information pertains to the our financial terms with venues, ticketing information, and staffing details, including names of employees. The Agreement reveals WWE's proposed percentage splits, fee structures, waivers and reimbursements to the venue, and comparables, and the Royal Rumble's estimated value and economic impact. Even within WWE, these terms are discussed only by a select group of internal personnel on a need-to-know basis, and the fully executed agreements are shared only with relevant personnel in WWE's Finance Department and saved on a drive that is accessible only by the Legal Department.

10. If this information was made publicly available and Brandon Thurston was permitted to publicize our financial information and negotiated terms on Wrestlenomics, WWE

would lose our bargaining power in negotiating all of our live events and much of the value of a bidding process for venues.

Declared as true and correct under penalty of perjury.

Executed in Fairfield County, State of Connecticut, on the 16th day of February, 2024.



Chris Legentil

Exhibit C



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2023

Ms. Lisa Biediger
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2023-14569

Dear Ms. Biediger:

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# 055519 (Ref. No. W498754).

The City of San Antonio (the "city") received a request for certain information pertaining to a specified event.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of World Wrestling Entertainment, Inc. ("WWE"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of the right to submit arguments to this office as to why the information at issue 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 considered the exception you claim and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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).

The city explains it is competing with other cities and venues for the ability to host WWE events as well as other high-profile events. You also inform us the city will be negotiating similar contracts in the future and release of the submitted information would place the city at a competitive disadvantage in procuring such contracts. Based upon your representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the submitted information would give advantage to a competitor or bidder. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 055519

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

Exhibit C-1



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2024

Ms. Lisa Biediger
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2024-001838

Dear Ms. Biediger:

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# 23-093955 (File# W554635).

The City of San Antonio (the "city") received a request for certain information pertaining to a specified event. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of World Wrestling Entertainment, Inc. ("WWE"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of the right to submit arguments to this office as to why the information at issue 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 considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2023-14569A (2023). In Open Records Letter No. 2023-14569A, we concluded the city must release the submitted information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2023-14569A as a previous determination and release the identical information in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information was not subject to prior ruling, we will address your submitted arguments.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” 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).

The city explains it is competing with other cities and venues for the ability to host WWE events as well as other high-profile events. You also inform us the city will be negotiating similar contracts in the future and release of the information at issue would place the city at a competitive disadvantage in procuring such contracts. We note the completed contract at issue was entered into prior to May 17, 2019.¹ Based upon your representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the city may withhold the information it marked under section 552.104(a) of the Government Code.²

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337,

¹ Section 552.104(c) applies to a request for information received after the effective date of the enacting legislation and a contract entered into or renewed on or after the effective date of the enacting legislation. Act of May 17, 2019, 86th Leg., R.S., H.B. 81, § 2. The effective date of the legislation enacting section 552.104(c) is May 17, 2019. *See* 2019 H.J. of Tex. 4236.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the remaining information consists of communications between city attorneys and city employees. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the city. You further state these communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the remaining information. Thus, the city may withhold the remaining information under section 552.107(1) of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2023-14569A as a previous determination and release the identical information in accordance with that ruling. The city may withhold the information it marked under section 552.104(a) of the Government Code. The city may withhold the remaining information under section 552.107(1) 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/pt

Ref: ID# 23-093955

c: Requestor

Exhibit C-2



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2024

Ms. Lisa Biediger
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

Requestor Copy
No mailing address provided

OR2023-14569A

Dear Ms. Biediger:

This office issued Open Records Letter No. 2023-14569 (2023) on April 28, 2023. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 28, 2023. Your request was assigned ID# 055519 (Ref. No. W498754).

The City of San Antonio (the "city") received a request for certain information pertaining to a specified event.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of World Wrestling Entertainment, Inc. ("WWE"). Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of the right to submit arguments to this office as to why the information at issue should not be released. *See id.* § 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 WWE. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

WWE asserts the submitted information constitutes trade secrets and commercial or financial information, the release of which would cause the company substantial competitive harm. Upon review, we find the submitted information is either subject to section 552.0222(b) or WWE has failed to provide specific factual evidence demonstrating the information at issue is confidential under section 552.110(b) or section 552.110(c). Therefore, the city may not withhold the submitted information under section 552.110(b) or section 552.110(c).

Section 552.1101(a) of the Government Code excepts from disclosure “information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor *in response to a request for a bid, proposal, or qualification*[.]” *Id.* § 552.1101(a) (emphasis added). Additionally, we note section 552.1101(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.1101(b). Upon review, we find WWE has failed to demonstrate the applicability of section 552.1101(a) to its information. Accordingly, the city may not withhold any of the information at issue under section 552.1101(a). The submitted information must be released.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/eb

Ref: ID# 055519

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

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Elanda Spencer on behalf of Tricia DeLeon

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Envelope ID: 84611718

Filing Code Description: Petition

Filing Description: PLAINTIFF'S ORIGINAL PETITION FOR
DECLARATORY JUDGMENT

Status as of 2/22/2024 4:13 PM CST

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