



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 17, 1996

Mr. John Steiner  
Division Chief  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-0046

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37292.

The City of Austin (the "city") received a request for "a copy of the proposal submitted by Texas Special in response to [the Request for Proposals for the Miniature Train Concession at Zilker Park]." The city has made available to the requestor the first six pages of the requested information but asserts that the remainder of the requested information is protected from required public disclosure under sections 552.104 and section 552.110.<sup>1</sup>

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4.

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<sup>1</sup>Because we resolve this matter under section 552.104, we do not address whether the requested information may be excepted from required public disclosure under section 552.110 at this time. However, we caution the city, without ruling on the issue, that some or all of the requested information may contain trade secrets or commercial or financial information.

You state that the city is currently in the negotiation phase of the procurement process and that release of the requested information would negatively impact the city's negotiation position. In Open Records Decision No. 170 (1977), this office stated that

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract being let.

Open Records Decision No. 170 (1977) at 2. Under the circumstances presented to us, we conclude that you may withhold the requested information from required public disclosure under section 552.104.<sup>2</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/ch

Ref.: ID# 37292

Enclosures: Submitted documents

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<sup>2</sup>Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. See Open Records Decision No. 541 (1990) at 5.

cc: Mr. Charles Beall  
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