



April 24, 2000

Mr. John Steiner  
Division Chief  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2000-1586

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act. Your request was assigned ID# 134563.

The City of Austin (the "city") received a request for information pertaining to the city's Request for Proposals #VC98300024, which solicits a contract for a regional trunk radio system. You state that you have provided the requestor bond fund information for this purchase in response to the requestor's second requested item. However, you wish to withhold from disclosure under section 552.104 of the Government Code the evaluation team information<sup>1</sup> and the proposals, which are the requestor's first and third requested items. We have considered the exception you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>You state that no information exists that is precisely responsive to the requestor's third requested item. Upon review of the request, it appears that you are actually referring to the requestor's first requested item of information which pertains to the members of the evaluation team. We note that the document you have submitted to this office contains the names of the evaluation team members and the entities they represent, but does not include the requested members' telephone numbers and addresses.

<sup>2</sup>We assume that the "representative sample" of the proposals submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state that the contract has not yet been negotiated or awarded and that if all of the proposals are rejected, the city would have to issue another solicitation for the same contract. Thus, you argue that release, at this time, of the proposals and evaluation team information would give an advantage to competitors or bidders, obstruct a fair solicitation process, and harm the city's negotiating position.

Section 552.104 of the Government Code states that:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). As the exception was developed to protect a governmental body's interests, a governmental body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

We have previously held that, so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive, and, therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. *See* Attorney General Opinion MW-591 (1982); Open Records Decision Nos. 170 (1977), 541 (1990).

Generally, however, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. Open Records Decision No. 541 (1990). Therefore, as the contract has not yet been negotiated or awarded and you have demonstrated the potential specific harm to the city's interest if the requested information is released, you may withhold the proposals and evaluation team information from disclosure under section 552.104 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673 6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/nc

Ref: ID# 134563

Encl. Submitted documents

cc: Mr. Jason Spencer  
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(w/o enclosures)