



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 10, 2009

Ms. Renee Byas
General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2009-01749

Dear Ms. Byas:

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# 334624.

Houston Community College (the "college") received a request for all information submitted in response to request for proposals number 08-37 pertaining to voice over IP deployment. You claim a portion of one of the submitted bid proposals is excepted from disclosure under section 552.104 of the Government Code. Furthermore, although you take no position with respect to the remaining submitted information, you state this information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, you notified INX, Troubadour, AT&T, and Verizon Business of the college's receipt of the request for information and of each company's right to submit arguments to this office as to why its information should not be released to the requestor.¹ *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.

¹We note the requestor, in this instance, is a representative of Verizon Business. We presume Verizon Business does not object to the release of its proposal to its representative, and, therefore, we do not address that information in this ruling.

Initially, we note the information in Exhibit B was not submitted by a vendor in response to the request for proposals at issue, as specified in the request. Thus, Exhibit B is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

You claim part of Troubadour's submitted bid proposal is excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You argue that although a final contract has been executed pertaining to Troubadour's proposal, the information you seek to withhold is excepted under section 552.104 and our ruling in Open Records Decision No. 541. In Open Records Decision No. 541, this office stated the predecessor to section 552.104 "may protect information submitted by a successful bidder if public disclosure will allow competitors to accurately estimate and thereby undercut future bids." ORD 541 at 4. We also noted, however, "this principle will apply when the governmental body solicits bids for the same or similar goods or services on a recurring basis." *Id.*; *see also* ORD 309. You have not explained how the information you seek to withhold in Troubadour's bid proposal relates to information the college solicits for the same or similar goods or services on a recurring basis. Thus, you have failed to demonstrate how release of the information you seek to withhold would harm the college's competitive interests as discussed in Open Records Decision No. 541. Furthermore, you have not provided any arguments explaining how release of the information at issue would otherwise cause potential harm to the college's interests in a particular competitive situation. Therefore, we find you have failed to demonstrate how the information you seek to withhold is excepted under section 552.104 of the Government Code, and it may not be withheld on this basis.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from INX, Troubadour, or AT&T explaining why their proposals should not be released. Therefore, we have no basis to conclude these companies have protected proprietary interests in their submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the college may not withhold INX's, Troubadour's, or AT&T's bid proposals on the basis of any proprietary interest they may have in them.

We note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, the submitted information must be released to the requestor in accordance with copyright law.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 334624

Enc. Submitted documents

cc: Requestor
(w/o enclosures)