



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2009

Ms. Kay Molina
General Counsel
Texas Facilities Commission
1711 San Jacinto Boulevard
Austin, Texas 78701

OR2009-03036

Dear Ms. Molina:

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# 337121.

The Texas Facilities Commission (the "commission") received a request for any memoranda, reports, evaluations, analyses, schedules, or studies concerning a plan to move state employees to a new office complex. You claim the requested information is excepted from disclosure under sections 552.104, 552.105, 552.106, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information, some of which includes representative samples of information.²

Initially, we note one of the submitted e-mails was created after the date of the request. Thus, this e-mail, which we have marked, is not responsive to the instant request for information. The commission need not release non-responsive information in response to this request and this ruling will not address that information.

We will next address the commission's argument under section 552.104 of the Government Code for the submitted responsive information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in

¹We note that in its brief dated January 12, 2009, the commission withdrew its assertion of section 552.107 of the Government Code.

²We assume that the "representative sample" of records 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.

certain competitive situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us the requested information relates to an ongoing bidding solicitation, specifically, Request for Offer ("RFO") #303-9-10001. You state the requested documents were used directly by the commission in preparing the specifications of the RFO. You explain release of the information at issue would provide valuable insight into the perspective of the commission to a prospective bidder. You also argue that release of the requested information at this stage would destroy the commission's ability to negotiate pricing for the design and construction phases of the project and would not only destroy the integrity of the bidding process, but would taint the whole design process. You state the closing date for submitting offers in response to the RFO has not yet occurred and, therefore, the commission has not finalized any decisions concerning the ultimate location or scope of the project. Based on your representations and our review, we conclude the commission may withhold the submitted responsive information at this time under section 552.104 of the Government Code. We note the commission may no longer withhold the information on this basis once the RFO has been awarded. As our ruling is dispositive under section 552.104, we need not address your remaining arguments against disclosure.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 337121

Enc. Submitted documents

cc: Requestor
(w/o enclosures)