



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 14, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-04884

Dear Ms. Chang:

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# 340885.

The City of Houston (the "city") received three requests for information related to solar power proposals, contracts, and agreements. You state you have no contracts or agreements responsive to the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>2</sup> You also state that release of this information may implicate the proprietary interests of the third parties whose information is requested. Accordingly, you have notified these companies of the request and of their opportunity to submit arguments to this office as to why their information should be excepted from public disclosure. *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 your arguments and reviewed the submitted information.

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<sup>1</sup> We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> Although you cite to sections 552.101, 552.110, 552.113, 552.128, and 552.131 of the Government Code, you have provided no arguments regarding these exceptions. Since you have not submitted arguments concerning sections 552.101, 552.110, 552.113, 552.128, and 552.131, this ruling does not address those exceptions. *See* Gov't Code §§ 552.301(b), (e), .302.

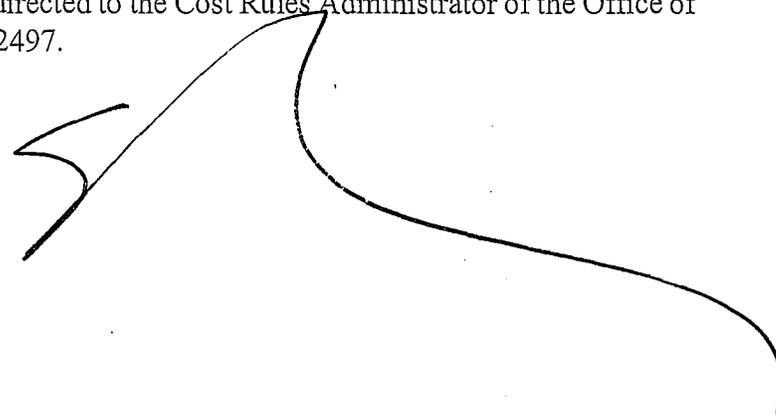
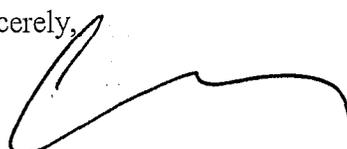
Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You indicate that the city issued a request for proposals for the design and construction of a solar facility. You state that the submitted information should be withheld until the City Council approves a contract with one of the bidders. You argue that if the city does not finalize a contract with one of the bidders, the city would have to seek a contract with another entity, and the city's negotiating position would be compromised. Based on your representations and our review of the submitted information, we conclude that the city may withhold the submitted information in its entirety at this time pursuant to section 552.104 of the Government Code.<sup>3</sup> However, we note that the city may no longer withhold the submitted information under section 552.104 once a contract has been executed.

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](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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

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<sup>3</sup> As our ruling is dispositive, we need not address the third parties' arguments against disclosure.

Ref: ID# 340885

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)