



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2009

Mr. Thomas P. Brandt
Fanning, Harper, & Martinson
Two Energy Square
4849 Greenville Avenue, Suite 1300
Dallas, Texas 75206

OR2009-05457

Dear Mr. Brandt:

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# 340858 (Commission File No. 25394).

The Arts of Collin County Commission, Inc. (the "commission"), which you represent, received two requests for the attachments of two specified e-mails. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-00521 (2009). In this ruling, we concluded that the commission may withhold certain information under sections 552.104 and 552.137 of the Government Code. With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude, as we have no indication that

¹ Although we understand you to raise section 552.110 of the Government Code, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. As we have received no arguments from any third party seeking to withhold any portion of the submitted information under section 552.110, we do not address the applicability of section 552.110 to the submitted information. *See Gov't Code § 552.305.*

the law, facts, and circumstances on which the prior rulings was based have changed, the commission may continue to rely on Open Records Letter No. 2009-00521 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. 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 state the commission entered into a contract with Hunt Construction for construction management services. You explain that Hunt's responsibilities include the development of a Guaranteed Maximum Price ("GMP") for the construction of performing and cultural arts facilities. You state the GMP will include bids from subcontractors, which have not been obtained. You contend that public disclosure of the submitted information would provide subcontractors "with knowledge regarding internal estimates of cost as well as issues relating to the development of the GMP." You explain knowledge of this information would allow the subcontractors to raise their bids in order to receive the maximum amount possible. As a result, you state the commission would be forced to pay higher than market price for services. Based on your representations, we find that release of the submitted information will give an advantage to a competitor or a bidder. Thus, the commission may withhold the submitted information under section 552.104 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2009-00521, the commission may continue to rely on that ruling as a previous determination for the identical submitted information. To the extent the submitted information is not encompassed by the previous ruling, the commission may withhold it under section 552.104 of the Government Code.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 340858

Enc. Submitted documents

c: Requestor
(w/o enclosures)