



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2009

Ms. Pauline E. Higgins
Senior Vice President & General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2009-07017

Dear Ms. Higgins:

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# 344054 (MTA ID# 2009-0108).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for letters and cost documents submitted by the authority to the Federal Transit Authority ("FTA") relating to a presentation given by the authority on March 4, 2009. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.106, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). The submitted documents include information prepared by the authority and its outside consultants for the FTA. The information outlines estimated

expenses and revenue for a transit project to be paid for with public funds. This information may only be withheld if it is confidential under other law. Gov't Code § 552.022(a)(5). You claim sections 552.103, 552.104, 552.106, 552.110, and 552.111 for the information that is subject to section 552.022. However, sections 552.103, 552.106, and 552.111 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records No. 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived). As such, sections 552.103, 552.106, and 552.111 do not constitute "other law" that makes information confidential for the purposes of section 552.022. Therefore, the authority may not withhold the information that is subject to section 552.022 under sections 552.103, 552.106, or 552.111 of the Government Code. However, because section 552.022 does not apply to information that is subject to section 552.104 and section 552.110 can constitute other law for purposes of section 552.022, we will consider your claims for these exceptions. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). We will also consider your arguments under sections 552.103, 552.104, 552.106, 552.110, and 552.111 for the information that is not subject to section 552.022.

You seek to withhold the submitted information under section 552.104, which protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." 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).

You state that the submitted information pertains to a proposed contract between the authority and Parsons Transportation Group ("Parsons") for design, construction, vehicle supply, financing, operations, and maintenance of a public transit improvement project called "Metro Solutions." You inform this office that the authority and Parsons are still negotiating the agreement, which includes terms that deal with financing of the project. You assert that the release of the submitted information would "put another firm at a competitive advantage because it could then base its proposal on Parson's proposal" and that this would harm the authority's bargaining position. Accordingly, based on your representations and our review, we conclude that the authority may withhold the submitted information under section 552.104 of the Government Code until the agreement is finalized. As our ruling is dispositive, we need not address your remaining arguments.

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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 344054

Enc. Submitted documents

c: Requestor
(w/o enclosures)