



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2009

Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal  
Attorneys for City of Victoria  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-14822

Dear Mr. Hyde:

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# 358772.

The City of Victoria (the "city"), which you represent, received a request for the following: (1) a specified proposal submitted by Don Krueger Construction; (2) information relating to the project architect's scoring and ranking of all proposals; and (3) information pertaining to the procurement of the services of Brown Reynolds Watford Architects, Inc. ("BRW"). You claim that the requested information is excepted from disclosure under sections 552.103, 552.104, 552.107, and 552.110 of the Government Code. Additionally, you state that the requested information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified A&A Constructors, Inc.; Amstar, Inc.; BRW; Comanche Contractors, L.P.; Davila Construction, Inc.; Dan Kruegar Construction Co.; General Contractor Services, Inc.; K&T Construction Co., Inc.; MAVCON; Merrell General Contracting, L.L.C.; Parallax Builders, Inc.; Roth Construction, Inc.; and Teal Construction Co. of the request for information and of their right to submit arguments to this office as to why each company's information should not be released. *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 received comments from BRW. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us that the city asked for clarification of category number three of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us that the city has not received a response from the requestor. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561(1990). In this case, as you have submitted information responsive to category three for our review and raised exceptions to disclosure for these documents, we consider the city to have made a good faith effort to identify the information that is responsive to category three of the request, and we will address the applicability of the claimed exceptions to this information.

Next, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

We also note that the submitted information includes several resolutions of the city council. The submitted resolutions, which we have marked, are analogous to ordinances. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). Accordingly, the city must release the submitted resolutions.

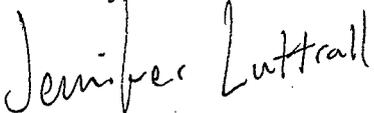
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, 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. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978). You state that no contract has been awarded or executed. You further state that release of the submitted information prior to awarding a contract would give a competitive advantage to a competitor or other bidder. Based on your arguments and our review of the information at issue, we find that release of the remaining submitted information would harm the interests of the city in a particular competitive situation. We therefore conclude that the city may withhold the remaining submitted information at this time pursuant to section 552.104 of the Government Code. However, we note that the city may no longer withhold this information under this exception to disclosure once a contract has been executed and is in effect. *See* ORD 541 at 5.

In summary, the city must release the marked resolutions. The city may withhold the remaining information at this time pursuant to section 552.104 of the Government Code. As our ruling is dispositive, we need not address the city's remaining arguments against disclosure or BRW's 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](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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 358772

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Ray Holliday, AIA  
Brown Reynolds Watford Architects, Inc.  
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College Station, Texas 77845  
(w/o enclosures)

A & A Constructors, Incorporated  
P.O. Box 465  
Victoria, Texas 77902  
(w/o enclosures)

Amstar, Inc.  
1211 Pleasanton Road  
San Antonio, Texas 78214  
(w/o enclosures)

Commanche Contractors, L.P.  
10450 Westoffice Drive  
Houston, Texas 77042  
(w/o enclosures)

Davila Construction, Inc.  
520 Bonham  
San Antonio, Texas 78205  
(w/o enclosures)

General Contractor Services, Inc.  
8400 La Porte Road  
Houston, Texas 77012  
(w/o enclosures)

K & T Construction Co., Inc.  
2802 East Rio Grande  
Victoria, Texas 77901  
(w/o enclosures)

Don Krueger Construction Co.  
P.O. Box 3613  
Victoria, Texas 77903-3613  
(w/o enclosures)

MAVCON  
1515 North Tanchua  
Corpus Christi, Texas 78401  
(w/o enclosures)

Merrell General Contracting, LLC  
3045 Highway 90 East  
Castroville, Texas 78009  
(w/o enclosures)

Parallax Builders, Inc.  
P.O. Box 55332  
Houston, Texas 77255  
(w/o enclosures)

Roth Construction, Inc.  
2002 Delmar Drive  
Victoria, Texas 77901  
(w/o enclosures)

Teal Construction Company  
5110-B IH-37  
Corpus Christi, Texas 78407  
(w/o enclosures)