



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 14, 2010

Mr. Thomas Bailey  
Legal Services  
Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2010-00745

Dear Mr. Bailey:

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# 367358.

VIA Metropolitan Transit ("VIA") received a request for the invoices and corresponding bills of ladings pertaining to VIA's current contract for low sulfur diesel and biodiesel fuels. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104 of the Government Code 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 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). However, in some situations section 552.104 will operate to protect from

---

<sup>1</sup>We 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.

disclosure bid information that is submitted by successful bidders. *See id.* at 5; *see also* Open Records Decision No. 309 (1982).

We understand VIA currently has a contract with the diesel fuel vendor whose information is at issue. You claim, however, that VIA has an Invitation for Bid ("IFB") for a new diesel fuel contract that is awaiting submissions from interested vendors and that release of the submitted invoices would give an advantage to the requestor, who is a potential vendor. You also state that VIA would lose access to objective proposals if VIA is required to surrender the requested information before bids are submitted and a contract is negotiated and signed. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the submitted information would harm VIA's interests in a particular ongoing competitive situation. *See* Open Records Decision No. 592 (1991). Therefore, VIA may withhold the submitted information under section 552.104.

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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/jb

Ref: ID# 367358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)