



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2010-01750

Dear Ms. De La Garza:

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# 369598.

The City of Houston (the "city") received three requests for information pertaining to the city's request for proposal for a construction contract disparity study. You state the city is releasing some information to the requestors. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. You also state that release of portions of the submitted information may implicate the proprietary interests of the third parties whose information is requested. Accordingly, you inform us that the city has 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.¹ 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

¹We understand the city notified the following third parties: Econsult Corporation; Lemond & Ross, LLC; Mason Tillman Associates, Ltd.; MGT of America, Inc.; Miller3 Consulting, Inc.; NERA Economic Consulting; and the University of Minnesota.

circumstances). We have considered your arguments and reviewed the submitted information, a portion of which consists of a representative sample.²

Initially, we note an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Because we have not received comments from any of the interested third parties, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of these third parties. Accordingly, none of the information pertaining to these parties may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret).

Next, you assert portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code, which excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). 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 executed. *See* Open Records Decision No. 541 (1990).

You state that no contract has been awarded or executed with regard to the request for proposal specified in the requests. You assert disclosure of the information at issue would give competitors an unfair advantage in the current bidding process. You also state that release of the information at issue would harm the city's ability to negotiate the current request for proposal. Based on your representations and our review, we conclude the city has demonstrated how release of the information you have identified would harm its interests in a competitive situation. Accordingly, the city may withhold the information at issue under

²We 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.

section 552.104 of the Government Code.³ However, we note that the city may no longer withhold the information at issue under section 552.104 once a contract has been executed.

We note some of the remaining information is excepted from disclosure under section 552.136 of the Government Code.⁴ Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.⁵

We note that portions of the remaining submitted information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city may withhold the information it has marked pursuant to section 552.104 of the Government Code. The city must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code. The city must release the remaining information, but any information that is protected by copyright may only be released in accordance with copyright law.

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,

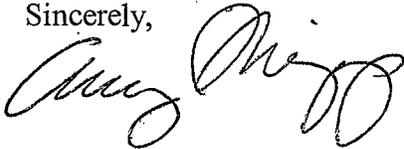
³ As our ruling is dispositive, we need not address the city’s remaining argument against disclosure of this information.

⁴The Office of the Attorney General will raise a mandatory exception like section 552.136 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 369598

Enc. Submitted documents

cc: Requestors (3)
(w/o enclosures)

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