



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2010

Ms. Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2010-01766

Dear Ms. Nelson:

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# 369307.

The El Paso Community College District (the "district") received thirteen questions regarding drug screening services and CSP #10-006. We understand that you are releasing information responsive to ten of the questions and have requested clarification of one of the questions.<sup>1</sup> 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 information.

We note that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8, (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8. As the district is releasing information in response to some of the questions, and is requesting a ruling or clarification in response to the remaining questions, we assume the district has made such an effort.

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

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<sup>1</sup>See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

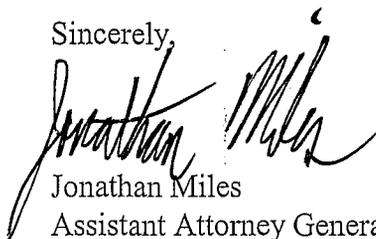
potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5; *see also* Open Records Decision No. 309 (1982).

We understand the district currently has a contract with the drug screening vendor whose information is at issue. You claim, however, that the district has a Competitive Sealed Proposal for a new drug screening contract that has not yet been completed and that release of the current contract and pricing would give an advantage to the current and potential bidders. You also state that rebidding for the Competitive Sealed Proposal may occur if the district's trustees reject all current bids. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the submitted information would harm the district's interests in a particular ongoing competitive situation. *See* ORD No. 592. Therefore, the district 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\\_or1.php](http://www.oag.state.tx.us/open/index_or1.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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 369307

Enc. Submitted documents

c: Requestor  
(w/o enclosures)