



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 16, 2010

Mr. Bryan F. Russ, Jr.  
Palmos, Russ, McCullough & Russ, L.L.P.  
P.O. Box 909  
Hearne, Texas 77859

OR2010-02268

Dear Mr. Russ:

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# 370340.

The City of Hearne (the "city"), which you represent, received a request for any information used by the city in setting retail utility rates, including rate comparisons, reports from staff or consultants, and comments from the city's utility customers. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted a copy of the city's contract with American Energy Producers for our review. To the extent any additional responsive information existed on the date the city received this request, we assume that the city has released it to the requestor. If the city has not released any such information, the city must release it at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now turn to your claims for the submitted information. Section 552.104 of the Government Code protects from required public 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 executed. *See* Open Records Decision No. 541 (1990).

We note that the submitted information consists of a contract that the city has already executed. However, you indicate that the city will solicit bids for similar services. Despite your general assertion, we conclude the information at issue does not reflect the city is engaging in any particular competitive bidding situation and you have not sufficiently explained the applicability of section 552.104 to the information you seek to withhold under this exception. *See* Open Records Decision No. 509 at 5 (1998) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Accordingly, we conclude that the city may not withhold the submitted contract under section 552.104 of the Government Code.

Next, the city claims the submitted contract is excepted under section 552.133 of the Government Code, which excepts from disclosure a public power utility's information related to a competitive matter. The city does not inform us that it is a public power utility. Gov't Code § 552.133(a)(1) (defining "public power utility"). Thus, the city has failed to demonstrate that section 552.133 is applicable, and the city may not withhold the submitted information on this basis.

We note some of the submitted information is subject to section 552.136 of the Government Code, which states 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."<sup>1</sup> *Id.* § 552.136(b). The city must withhold the bank account number and bank routing number we have marked under section 552.136 of the Government Code.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We 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 bank account numbers and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the city must withhold the bank account number and bank routing number we have marked under section 552.136 of the Government Code. The remaining information in the submitted contract must be released.

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 370340

Enc. Submitted documents

c: Requestor  
(w/o enclosures)