



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2010

Ms. Lynne Wilkerson
General Counsel
Bexar County Juvenile Probation Department
301 East Mitchell Street
San Antonio, Texas 78210-3845

OR2010-06620

Dear Ms. Wilkerson:

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# 378638.

The Bexar County Juvenile Probation Department (the "department") received two requests. The first request was for five categories of information pertaining to the RFP for Global Positioning Satellite ("GPS") Services. The second request was for all bid documents pertaining to the RFP for GPS Services. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state the requested documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing the department notified Sentinel Offender Services, LLC. ("Sentinel"); Recovery Healthcare Corporation ("Recovery"); BI Incorporated ("BI"); and Satellite Tracking of People, LLC ("Satellite") of the request for information and of their right to submit arguments to this office as to why the requested 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 considered the exceptions you claim and reviewed the submitted information.

Initially, we note you state, among other things, that some of the submitted information is marked as confidential. We note that information is not confidential under the Act simply

because the party that submitted the information anticipated or requested that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Thus, the department must release the responsive information unless it falls within the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary. *See* Open Records Decision No. 470 at 2 (1987).

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 awarded. *See* Open Records Decision No. 541 (1990).

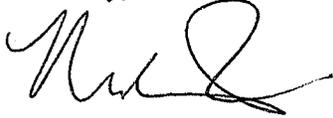
You state the submitted information consists of proposals, pricing, and scoring sheets submitted by four firms seeking a contract for GPS tracking services with the department. You inform us that the proposed contract has not yet been executed. Based on your representations and our review, we conclude that release of the submitted information would harm the department’s interests in a competitive bidding situation; thus, the department may withhold the submitted information from both requestors under section 552.104 of the Government Code until a contract for these services is executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 378638

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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