



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2010

Ms. Neera Chatterjee  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2010-09644

Dear Ms. Chatterjee:

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# 387588 (ORR #1 from John Weitzel, OGC# 130160).

The University of Texas System (the "system") received a request for "the proposals submitted for the Life and AD&D bid [and] any contract changes associated with them[.]" You state that the system does not have any information responsive to the requested contract changes.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state that the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you provide documentation showing that the system notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>2</sup> 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 claimed exception and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>The following third parties were notified pursuant to section 552.305: Aetna Life Insurance Company, Dearborn National, Metropolitan Life Insurance Company, Minnesota Life Insurance Company, Prudential Insurance Company of America, and Standard Insurance Company.

Section 552.104 of the Government Code 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 while the bidding has closed, the contract has not been executed. You also state negotiations are ongoing and the system may "have to revisit other submitted proposals to determine an alternate choice from the remaining vendors." You further state that because the contract has not been executed, release of the submitted information at this time would place the system at a disadvantage in obtaining a fair contract should the initial negotiations fail. Based on your representations and our review, we determine the system has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the system may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 387588

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John Milligan  
Aetna Life Insurance Company  
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(w/o enclosures)

Ms. Kathy S. Henderson  
Dearborn National  
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Metropolitan Life Insurance Company  
5400 LBJ Freeway, Suite 1100  
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Mr. Brian Loudon  
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