



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Mr. John A. Haislet
Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2010-10386

Dear Mr. Haislet:

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# 386427 (LegalDesk #FZI-652548).

The City of Tyler (the "city") received a request for information pertaining to a specified contract. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Moreover, you state that release of this information may implicate the proprietary interests of Anchor Safety, Inc. ("Anchor"). Accordingly, you state, and provide documentation showing, you notified Anchor of the request for information and of its right to submit arguments to this office as to why the submitted 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 received comments from Anchor. We have considered the submitted arguments and reviewed the submitted information.

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(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) (construing statutory predecessor). 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). However, in Open Records Decision No. 541, this office also stated that the predecessor to section 552.104 may protect information after

bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

We understand the city currently has a contract with the company whose information is at issue. You assert, however, that the information at issue relates to a contract for the performance of annual testing and monitoring of the city's fire protection systems, which is a revolving and recurring contract. You assert that release of the submitted information, which includes a detailed price, rate, and structure of service list, would be harmful to the city's interest in a competitive bidding situation because it would place the city in a weaker position during future negotiations for the contract at issue. Based on your representations and our review of the submitted information, we find the city has demonstrated release of the submitted information would harm the city's interests in a particular ongoing competitive situation. *See* Open Records Decision No. 592 (1991). We therefore conclude the city may withhold the submitted information under section 552.104.¹

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

¹As our ruling is dispositive, we do not address the remaining arguments against disclosure.

Ref: ID# 386427

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stephen L. Smith
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(w/o enclosures)