



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

Mr. Jeffrey T. Pender
Deputy General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR2010-13016

Dear Mr. Pender:

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# 391823.

The Texas Department of Housing and Community Affairs (the "department") received a request for a specified portion of Boston Capital Asset Management L.P.'s ("Boston Capital") bid proposal. You take no position on release of the requested information. However, you have notified Boston Capital of this 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information. We have also considered comments received from Boston Capital.

Boston Capital asserts its information is marked as confidential. Information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests 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 through an 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

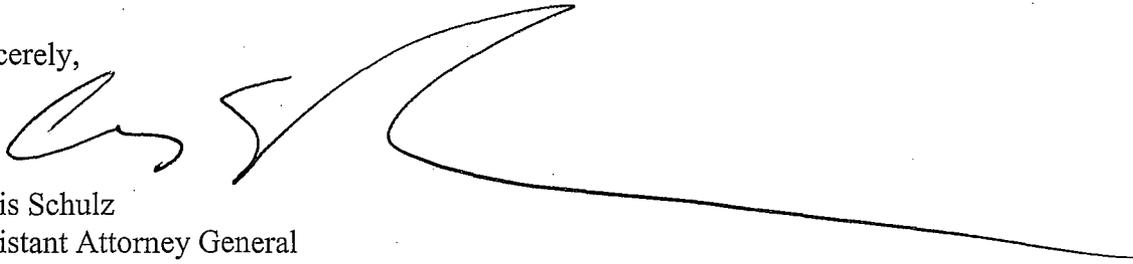
supplying information does not satisfy requirements of statutory predecessor to section 552.110 of the Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Boston Capital argues that pages 18 through 20 of its bid proposal are excepted from disclosure pursuant to section 552.104 of the Government Code. Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects the competitive interests of governmental bodies such as the department, not the proprietary interests of private parties such as Boston Capital. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). In this instance, the department did not raise section 552.104 as an exception to disclosure. Therefore, the department may not withhold any of the submitted information under section 552.104 of the Government Code. As Boston Capital does not raise any other exceptions against disclosure, the submitted information 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, 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/em

Ref: ID# 391823

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Nestor M. Nicholas
General Counsel
Boston Capital Corporation
One Boston Place
Boston, Massachusetts 02108-4406
(w/o enclosures)