



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2010

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

OR2010-14742

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# 395059.

The Texas Department of Housing and Community Affairs (the "department") received a request for the proposals submitted by the top three bidders in response to the department's request for proposal number 332-RFP10-1005. You state you have released some of the requested information to the requestor. You take no position on release of the submitted information. However, you have notified the interested third party, Tax Credit Asset Management ("TCAM"), 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 TCAM.

Initially, we note the requestor clarified his request to exclude any pricing proposals.<sup>1</sup> Accordingly, the submitted pricing proposal is not responsive to the request and need not be released to the requestor.

TCAM asserts portions of its information are 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 responsive information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

TCAM argues that its financial statement and pages 5 through 7 and 22 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 TCAM. *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 TCAM does not raise any other exceptions against disclosure, the submitted responsive information must be released to the requestor.

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

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<sup>1</sup>You provide documentation showing that the requestor narrowed his request to exclude any pricing proposals. *See Gov’t Code § 552.222(b)* (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 395059

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Jenny Netzer  
Chief Executive Officer  
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Boston, Massachusetts 02111  
(w/o enclosures)