



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR2010-19279

Dear Ms. Grace:

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# 404158.

The City of Austin (the "city") received a request for "any evaluations . . . of the RFP submitted by Austin Pets Alive! to run the comprehensive adoption program at TLAC." You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim 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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See id.* at 5. Furthermore, section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no "competitors" for that contract. *See* Open Records Decision No. 331 (1982).

You state the submitted information pertains to a recently issued request for proposals related to outsourcing the city's animal adoption services. You state the city will now begin negotiating with the potential vendor and release of the submitted evaluation "could undermine the selection process, to the detriment of the public and the city." Although you inform us that the city received two responses to its request for proposals, you also state and one "was deemed non-responsive." Thus, we find the city has not shown there is more than one "competitor" for the contract at issue. Upon review, we find the city has failed to demonstrate how the release of the submitted information would affect an ongoing competitive bidding situation. Thus, the city has failed to demonstrate the applicability of section 552.104 to the information, and the city may not withhold the information at issue under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, the city must release the submitted information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 404158

Enc. Submitted documents

c: Requestor
(w/o enclosures)