



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2011

Mr. Robert Schell
Assistant Director of General Counsel
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75093

OR2011-00472

Dear Mr. Schell:

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# 405504.

The North Texas Tollway Authority (the "authority") received a request for bid tabulations related to eight specified projects. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

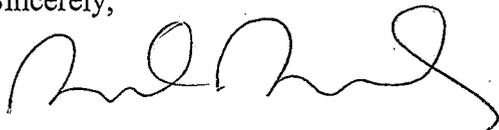
competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You explain the submitted information consists of scoring documents ranking companies who submitted bids to the authority for consideration in the specified solicitations. You state although the authority has tentatively selected winning firms for some of the solicitations, it has not yet executed a contract for any of them. You also explain how release of the submitted tabulations prior to execution of their related contracts would harm the authority's interest in negotiating those contracts. Based on your representations and our review, we conclude release of the submitted information would give advantage to a competitor or bidder; therefore, the information is excepted from release under section 552.104 of the Government Code.² See Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). However, the authority may no longer withhold the submitted information under this exception to disclosure once a contract is executed. See ORD 541 at 5.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

²As we are able to make this determination, we need not address your remaining argument against disclosure.

Ref: ID# 405504

Enc. Submitted documents

c: Requestor
(w/o enclosures)