



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2011

Ms. Denise S. Young
Staff Attorney
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2011-01708

Dear Ms. Young:

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# 407969.

The Capital Metropolitan Transportation Authority (the "authority") received a request for (1) all e-mails and communications sent to or from representatives of Nova Bus during a specified time period and (2) all communications between a named individual and the authority. You state the authority will provide some of the communications involving the named individual to the requestor. You claim the submitted bid proposal information, communications, and negotiation records are excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of Nova Bus. Thus, pursuant to section 552.305 of the Government Code, you notified Nova Bus of the request and of the company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Nova Bus. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." *Id.* § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a

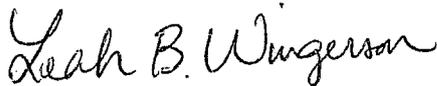
governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm 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).

You explain the authority is in the process of selecting a vendor to supply vehicles for the authority's fleet. Although you indicate a bidder has been chosen for the project at issue, you state a contract has not yet been awarded. You assert release of the submitted information at this stage in the selection process would undermine the selection process. You also indicate releasing the information would harm the authority's ability to negotiate a final agreement. Based on your representations, we conclude the authority may withhold the submitted information under section 552.104 of the Government Code.¹ However, the authority may no longer withhold the submitted information under this exception to disclosure once a contract has been 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

¹As our ruling is dispositive, we need not address Nova Bus's arguments against disclosure.

Ref: ID# 407969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)