



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2011

Ms. Jacquelyn R. Douglas
Interim Executive Director
Galveston County Community Action Council
P.O. Box 3206
Galveston, Texas 77552

OR2011-07212

Dear Ms. Douglas:

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# 418316.

The Galveston County Community Action Council (the "council") received a request for all bid packets submitted for the 2011 CEAP Contractor; credentials of committee members that scored the bids; licenses, certifications, and accreditations held by specified individuals; the name of the firm that put together the bid proposal; and information about the winning bidders. You indicate you have no information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of multiple third parties. Accordingly, we understand you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from A.J. Struss Company, LLC ("Struss") and BMS Companies ("BMS"). We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, you argue a portion of the request requires the council to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). We assume the council has made a good faith effort to do so.

Next, we note you have not submitted information responsive to the requests for credentials of committee members that scored the bid and the name of the firm that put together the bid proposal. To the extent any information responsive to these portions of the request existed on the date the council received the request, we assume the council has released it. If the council has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104 of the Government Code protects from required public 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 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 executed. *See* Open Records Decision No. 541 (1990).

You state the bidding process related to the submitted documents has been conducted twice; however, a contract was not awarded. You inform us the council has elected to make changes to the bid packet and will restart the process. Thus, you assert release of the submitted information at this time would harm the future competitive bidding and proposal process. Based on your representations, we conclude the council may withhold the submitted information under section 552.104 of the Government Code.²

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.

²As our ruling is dispositive, we need not address BMS and Struss's arguments against disclosure of their submitted information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bs

Ref: ID# 418316

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Sidney E. Struss
Managing Partner
A.J. Struss Company, LLC
P.O. Box 428
Eagle Lake, Texas 77434
(w/o enclosures)

Ms. Mary Sue Hernandez
President
BMS Companies
406 Deats Road
Dickinson, Texas 77539
(w/o enclosures)

American Christian A/C & Heat Co.
4322 Sugar Bars Drive
Friendswood, Texas 77546
(w/o enclosures)