



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 8, 2011

Mr. Jeffrey Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-08150

Dear Mr. Moore:

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# 419852.

The City of Forney (the "city"), which you represent, received a request for the total amount budgeted for three pass through projects, F.M. 548/80, F.M. 740, and F.M. 741, broken down by project, and a specified agreement. You state the city has provided the requestor with the budget of F.M. 548/80 and F.M. 741. You claim the information you marked concerning F.M. 741 is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the portion of the request seeking the specified agreement. Thus, to the extent information responsive to that portion of the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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

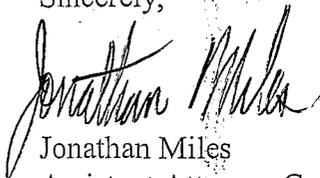
Decision No. 463 (1987). Section 552.104 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

In this instance, you assert the marked information includes the maximum amount of dollars available for F.M. 740, a phased project that has not been bid out. You state if the information you have marked is released, potential bidders would know the maximum funding for F.M. 740 phase of the project and could increase their bids accordingly, resulting in higher prices to the city. Based on your representations and our review, we conclude you have demonstrated how release of the marked information would harm the city's interests in a competitive situation. Accordingly, the city may withhold the marked information under section 552.104 of the Government Code. The remaining information must be released.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 419852

Enc. Submitted documents

c: Requestor
(w/o enclosures)