



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Mr. R. Brooks Moore
Managing Counsel
Texas A&M University
209 Technology Way, Suite 2079
College Station, Texas 77845

OR2011-09672

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# 423018 (TAMU 11-230).

Texas A&M University (the "university") received a request for a specified contract and the accepted proposal that led to that contract. You claim the submitted contract is excepted from disclosure under section 552.104 of the Government Code. Although you take no position with respect to the public availability of the submitted proposal, you state its release may implicate the proprietary interests of Birdstrike Control Program ("Birdstrike"). Accordingly, you state the university notified Birdstrike of the request for information and of its right to submit arguments to this office as to why its 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 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). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

In this instance, you state that although the submitted contract has been executed, it was subsequently cancelled. You state the university is in the process of preparing a new request for proposals to replace the cancelled contract. You state release of the cancelled contract at this time would harm the university's ability to negotiate a new agreement. Based on your representations and our review, we conclude that the university has demonstrated how release of the submitted contract would harm its interests in a competitive situation. Accordingly, the university may withhold the submitted contract under section 552.104.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Birdstrike explaining why the company's submitted proposal should not be released. Therefore, we have no basis to conclude Birdstrike has any protected proprietary interests in its submitted information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the university may not withhold any portion of Birdstrike's proposal based upon the proprietary interests of that company.

In summary, the university may withhold the submitted contract pursuant to section 552.104 of the Government Code and must release the submitted proposal.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eb

Ref: ID# 423018

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

