



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2011

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2011-10759

Dear Ms. Grace:

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# 424971.

The City of Austin (the "city") received a request for five categories of information pertaining to the funding of the Elm Ridge Affordable Housing Partners ("Elm Ridge") and Marshall Affordable Partners, Ltd. ("Marshall") housing projects. We understand the city has released all responsive information that has not been submitted for our review. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, the requestor claims the city does not have standing to raise section 552.104 of the Government Code because that section should be raised by the interested third parties. However, section 552.104 protects the competitive interests of governmental bodies, not the proprietary interests of private parties. Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor to section 552.104). Therefore, we find the city's assertion of section 552.104 is proper, and we consider its claims under that exception.

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

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 those records contain substantially different types of information than that submitted to this office.

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 explain the information at issue pertains to a program run by the city that distributes funding in connection with the city's affordable housing programs. You also explain this program awards funds to companies like Marshall and Elm Ridge based on its consideration of applications from such companies. You generally state that because the city has not yet finalized its award of funds to Marshall, release of the submitted information at this time would undermine the award process. The submitted information consists of a scheduling notice, an evaluation of Elm Ridge's application, and an untitled spreadsheet. You do not provide arguments explaining how release of this information would actually interfere with the process of awarding funds to Marshall. Further, you do not explain how interference with that process would cause any specific harm to the city. Consequently, we find you have failed to explain the applicability of section 552.104 of the Government Code to the submitted information. As you raise no other exceptions to disclosure, the submitted information must be released in its entirety.

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

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Enc. Submitted documents

c: Requestor
(w/o enclosures)