



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2011

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Ste. 100  
Conroe, Texas 77301

OR2011-16396

Dear Mr. Walker:

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# 435858 (AW-CoMO-0006, AW-CoMO-0008).

The Montgomery County Attorney's Office (the "county") received two requests from the same requestor for (1) any reports or data referring to a specified entity for a specified period of time, (2) a specified request for proposals ("RFP"), and (3) any correspondence or records of interaction by or between a named individual and any county animal shelter staff or volunteer regarding animals that appeared in inventory but were known or suspected of being missing from the shelter for a specified time period.<sup>1</sup> You state the county does not have access to any information responsive to item three of the request.<sup>2</sup> You claim some of 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 information.

---

<sup>1</sup>We note the county sought and received clarification of one of the requests. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>You inform us any responsive e-mails were lost due to a corrupted file. The 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).

Section 552.104 of the Government Code excepts from required public disclosure “information which, if released, would give advantage to competitors or bidders.” Gov’t Code § 552.104(a). 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 on the privatization of the county’s animal shelter has not been concluded and no contract has been executed. You assert disclosure of the specified entity’s proposal at this time would give an advantage to competitors or other bidders and negatively impact the county’s ability to award the contract to an agency that would provide the most adequate services to the county. Based on your representations and our review, we conclude the county has demonstrated how release of the specified entity’s proposal would harm its interests in a competitive situation. Accordingly, the county may withhold the specified entity’s proposal under section 552.104 of the Government Code until a contract is executed. As you raise no objections to the release of the specified RFP, the county must release it to the requestor.

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 435858

Enc. Submitted documents

c: Requestor  
(w/o enclosures)