



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2011

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2011-16626

Dear Ms. McGowan:

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# 435833 (ORR #10516).

The Dallas Independent School District (the "district") received a request for the bid tabulations from the district's last awarded bid for gasoline and diesel, the original awarded vendor's bid from the last awarded bid, and two invoices per month of the district's current contract delivered by the current vendor and the corresponding bills of ladings of each gasoline and diesel. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us you have notified Martin Eagle Oil Company ("Martin Eagle") and Lucky Lady Oil Company ("Lucky Lady") of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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

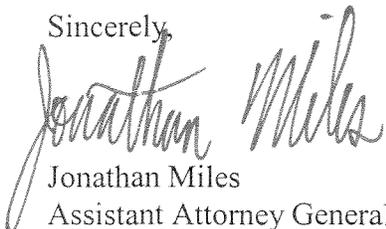
§ 552.104. The purpose of section 552.104 is to protect the interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information 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). 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).

We understand the submitted information relates to the district's previously awarded contract for providing gasoline and diesel services for the district. You inform us the district currently has an open bid out for gasoline and diesel services and that release of the submitted information would jeopardize the district's bargaining position when entering into contract negotiations with regard to the current request for proposals. Based on your representations and our review, we conclude the district may withhold the submitted information under section 552.104 of the Government Code, until such time as the contract has been executed.

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# 435833

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Martin Eagle Oil Company
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(w/o enclosures)

Mr. Rick Canady
Lucky Lady Oil Company
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