



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2011

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-17883

Ms. Chatterjee:

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# 438650.

The University of Texas at Arlington (the "university") received a request for information pertaining to letters of intent and/or correspondence to the university from businesses interested in leasing retail space in the College Park District mixed-use development. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of SRS Real Estate Partners ("SRS"). Accordingly, you notified SRS of the request for information and of its right to submit arguments to this office as to why the submitted 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 exceptions you raise and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." 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 university is considering proposals of potential vendors to lease retail and restaurant space in the property development at issue. You state the letters of intent, drafted by SRS on the basis of communication with prospective tenants, are merely drafts of potential lease agreements. You explain the university is still negotiating terms with potential tenants, and that no final letters of intent or other contracts have been executed with regard to lease of the property development at issue. You further explain that if negotiations with potential tenants fail, the university will enter into negotiations with other potential tenants, and releasing the submitted letters of intent would therefore jeopardize the university's bargaining position if it were to enter into contract negotiations with other potential tenants. Based on your representations and our review, we conclude the university has demonstrated how release of the requested information would harm its interests in a competitive situation. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code.¹

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 438650

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.