



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2011

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-18171

Dear Ms. Evans:

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# 438571 (Houston GC No. 18962).

The City of Houston (the "city") received a request for (1) all communications between the city and Waste Management, Inc. ("WMI") for a specified time period; (2) all communications between the city and another individual or company pertaining to Request for Proposal number T24076 ("the RFP") or communications regarding the drafting of the RFP for a specified time period; (3) notes of any meetings or telephone calls between the city and WMI for a specified time period; (4) a list of persons who downloaded, were sent, or who requested the RFP; and (5) a list of persons who were notified that the RFP was posted, the method of the notification, and the e-mail address to which the notification was submitted. You claim that the requested 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.

Initially, we note you have submitted information pertaining to only the requested communications pertaining to the drafting of the RFP. You state you have submitted a representative sample of information; however, no portion of the submitted representative sample pertains to the requested communications between the city and WMI; notes of any meetings or telephone calls between the city and WMI; a list of persons who downloaded, were sent, or who requested the RFP; or a list of persons who were notified that the RFP was

posted, the method of the notification, and the e-mail address to which the notification was submitted. Thus, we find the submitted information is not representative of all the information sought in the remaining items of the request for information. Please be advised this ruling applies to only the types of information you have submitted for our review. Therefore, this ruling 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. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed public). To the extent any information responsive to the remaining items of the request existed on the date the city received the information, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible).

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 RFP is "currently open to the public" and indicate no contract has been executed. You assert disclosure of the submitted information at this time would give an advantage to prospective bidders. Based on your representations and our review, we conclude the city has demonstrated how release of the submitted information would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code until the contract is 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](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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 438571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)