



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2011

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

OR2011-18311

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# 440803 (ORR# 19039).

The City of Houston (the "city") received a request for an "[e]lectronic list of all real property owned by the [c]ity [that] has been deemed surplus." You state the city is releasing some of the requested information, but claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information consists of appraisal reports that are subject to section 552.022 of the Government Code. Section 552.022(a)(1) reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). Although you assert this information is excepted from disclosure under section 552.105, this section is discretionary and does not make information confidential under the Act. *Id* §§ 3-21, 23-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.105. However, because information that is subject to section 552.022 may be withheld from disclosure under section 552.104, we will address your claim under that exception. *See* Gov't Code § 552.104(b) (information protected by Gov't Code § 552.104 not subject to required public disclosure under Gov't Code § 552.022(a)).

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).

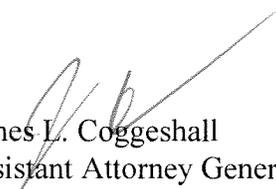
You state the city has been authorized to sell the properties at issue. You also state the city will dispose of the properties through a sealed bid sale to the highest bidder, and assert release of the submitted appraisal reports “will negatively impact the ability of the [c]ity to receive the highest possible bids.” Based on your representations and our review, we determine the city has demonstrated release of the submitted information would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information from release under section 552.104 of the Government Code.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 440803

Enc. Submitted documents

c: Requestor  
(w/o enclosures)