



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2012

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-08829

Dear Ms. Nicholson:

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# 456059.

The City of Austin (the "city") received two requests from the same requestor for documentation of payments made by the city to landowners for all subterranean easements relating to a specified project and between the Slaughter Creek Wastewater Tunnel to Interstate Highway 35 for a specified time. You claim 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 representative sample of information.¹

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(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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore 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.

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).

You explain the city is in the process of purchasing easements for the purpose of installing a wastewater tunnel, has finalized purchases from some landowners, and is still negotiating with other landowners along the proposed route. You state release of the requested information would harm the city's ongoing negotiations because it will cause the remaining landowners to raise their prices. Thus, you contend disclosure of the requested information would put the city at a competitive disadvantage in its ongoing negotiations. Based on your representations and our review, we conclude the city has demonstrated release of the requested information would harm its interests in a competitive situation. Accordingly, the city may withhold the requested information 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, 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/bs

Ref: ID# 456059

Enc. Submitted documents

c: Requestor
(w/o enclosures)