



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2012

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

OR2012-14216

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# 464435.

The City of Austin (the "city") received requests from two requestors for information related to the selection of a vendor to construct the Dunlap Substation for Austin Energy. You indicate some of the requested information either has been or will be released. You claim the rest of the requested information is excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception you claim and reviewed the information you submitted.

We note the second requestor asks questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). A governmental body must make a good-faith effort, however, to relate a

¹We note you also raise section 552.101 of the Government Code but have submitted no arguments in support of your assertion of that exception. Therefore, this decision does not address section 552.101. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exception is applicable to information at issue).

request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the city has done so. To the extent the city maintained any information pertaining to the second requestor's questions when it received his request but has not submitted the information in requesting this decision, we assume any such information has been released to the requestor. If not, then the city must release any such information immediately.² *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

With regard to the information at issue, you indicate the highlighted portions of the compliance plans are published on the city's website as part of draft agenda items 22 and 26 for the June 28, 2012 meeting of the Austin City Council (the "council"). We note some of the highlighted information does not appear in the materials published on the website for agenda items 22 and 26.³ We also note section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). As we stated in Open Records Decision No. 682 (2005), "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7. Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; *see* Gov't Code § 552.221(b). Thus, the city must provide the requestors with access to or copies of any responsive information published on the city's website. We note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information. *See* ORD 682 at 7.

Next, we address your claim under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104(a) requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104(a) does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

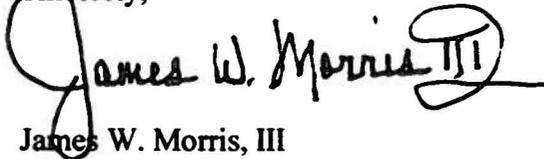
³We note item 26 pertains to a contract with an asphalt paving company for a miscellaneous streets overlay project.

You explain the council decided at its June 28 meeting to reject all bids to construct the Dunlap Substation. You inform us the city will rebid the project in the future, and the same or substantially the same request for proposals will be issued for the project. You contend the release of the information at issue could undermine the bidding process, to the detriment of the public and the city. Based on your representations, we conclude the city may withhold the submitted information under section 552.104(a) of the Government Code, except for the information in the compliance plans and the hearing officer's decision you have marked to be released. We note the information at issue may no longer be withheld under section 552.104(a) once the bidding process has concluded and a contract is in effect.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 464435

Enc: Submitted information

c: 2 Requestors
(w/o enclosures)