



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2012

Mr. Thomas Bailey  
Legal Services  
Via Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2012-14732

Dear Mr. Bailey:

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# 466349.

VIA Metropolitan Transit ("VIA") received a request for five categories of information pertaining to request for proposal ("RFP") number 12-012. You claim that 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 information.

Initially, you state a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-09986 (2012). In that ruling, we determined VIA may withhold the requested information under section 552.104 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude VIA may rely on Open Records Letter No. 2012-09986 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument against the release of the submitted information not encompassed by Open Records Letter No. 2012-09986.

Section 552.104 of the Government Code excepts from 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 interests of a governmental body in certain competitive situations, including competitive bidding. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 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. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See id.*

You state the remaining information is related to an RFP that has not resulted in an award of a contract. You contend release of the remaining information would harm VIA's negotiation power and could provide an unfair advantage to the requestor over its competitors should the specified RFP have to be reissued. Based on your representations and our review, we conclude VIA may withhold the remaining information under section 552.104 of the Government Code until such time as the contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

In summary, to the extent the submitted information is identical to the information previously ruled upon by this office in Open Records Letter No. 2012-09986, VIA may rely on that ruling as a previous determination and withhold the identical information in accordance with Open Records Letter No. 2012-09986. VIA may withhold the remaining 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](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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 466349

Enc. Submitted documents

c: Requestor  
(w/o enclosures)