



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

Mr. Stephen Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-14811

Dear Mr. Cumbie:

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# 465420 (Fort Worth PIR No. W018136).

The City of Fort Worth (the "city") received a request for all materials presented to the city council, Aetna Life Insurance Company's ("Aetna") response, scoring materials, and any correspondence between human resources personnel and any vendor pertaining to a specified request for proposals ("RFP"). You state you have marked insurance policy numbers for redaction from the submitted information under section 552.136(c) of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. Additionally, you indicate the release of the submitted information may implicate the proprietary interests of Aetna. Accordingly, you notified Aetna of the request and of its right to submit arguments to this office as to why its submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹Section 552.136(c) of the Government Code authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Aetna. We have considered the submitted arguments and reviewed the submitted information.

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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). 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 issued the RFP at issue for the management of the city's health plan and other benefits. You state the city council approved the city's recommendation that an agreement be authorized with a particular bidder. You state the city is currently negotiating a contract with this bidder regarding various terms of the final agreement, but a final contract has not yet been signed. You claim releasing the submitted information will harm the city's negotiating position and would give an advantage to the other competitors and bidders if negotiations fail and the city selects an alternate vendor or issues a new RFP. Based on your representations and our review, we conclude the city has demonstrated the applicability of section 552.104 to the submitted information. Accordingly, we conclude the city may withhold the submitted information under section 552.104 of the Government Code until such time as a 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). As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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, appearing to read 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 465420

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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