



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2013

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2013-05365

Dear Ms. Alexander:

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# 483221.

The Texas Department of Transportation (the "department") received six requests for information pertaining to competitive procurement 86-2RFP5012, including scoring documents; letters of interest; a list of all department employees involved in the selection process and their role; notes; and e-mails sent or received by named department employees. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

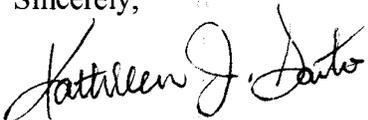
§ 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 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 submitted information was submitted or created in connection with a specific competitive procurement, and the contract has not been awarded or executed. You assert disclosure of this information at this time would give an advantage to competitors, which could "undermine the contract negotiation process." Based on your representations and our review, we conclude the department has demonstrated release of the information at issue would harm its interests in a particular competitive situation. Accordingly, the department may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.<sup>3</sup>

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 483221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)