



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2013

Ms. Donna L. Johnson
Counsel for the City of Alvin
Olson & Olson LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2013-07687

Dear Ms. Johnson:

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# 486856 (City Reference No. COA13-003).

The City of Alvin (the "city"), which you represent, received a request for all information pertaining to the proposed animal control facility bid proposal, including the minutes/working papers of any council meetings, committee meetings, workshops, architectural reviews, recommendations, and votes. You state the city will redact e-mail addresses and insurance policy and account numbers pursuant to the previous determination in Open Records Decision No. 684 (2009).¹ You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.104, 552.107, and 552.110 of the

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including access device numbers under section 552.136 of the Government Code and e-mail addresses under section 552.137 of the Government Code. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in subsection 552.136(b) without the necessity of seeking a decision from the attorney general. *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(e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Although you do not identify any of the third parties, you state the third parties have been notified of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Bass Construction Co., Inc. We have reviewed the submitted arguments and the submitted representative sample of information.²

Section 552.104 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 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 information pertaining to a completed bidding process for which a contract has been executed. You state the information at issue pertains to an ongoing competition or bidding for services, and that the bid process is incomplete and no contract has been executed. You further state two packets have yet to be opened. You argue release of the information may give advantage to a competitor or bidder vying to provide services to the city. Upon review, we agree the city may withhold the information at issue under section 552.104 of the Government Code until such time as the contract has been executed.³ *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 the expense of others and could be detrimental to the public interest in the contract under negotiation).

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.

²We 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.

³As our ruling is dispositive, we need not address any of the remaining arguments against disclosure.

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,



Eamon D. Briggs
Assistant Attorney General
Open Records Division

EDB/som

Ref: ID# 486856

Enc. Submitted documents

c: Requestor
(w/o enclosures)