



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2013

Ms. Neera Chatterjee  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2013-08045

Dear Ms. Chatterjee:

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# 487574 (OGC# 148872).

The University of Texas Health Science Center at Houston (the "university") received a request for the current contract, bid tabulation, and winning bid for custodial services. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of a portion of the submitted information may implicate the proprietary interests of GCA Services Group ("GCA"). Accordingly, you inform us, and provide documentation showing, you notified GCA of the request and of the company's right to submit comments to this office as to why their submitted information should not be released to the requestor. *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 to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us the submitted pricing matrix may have been previously released. We note information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988).

Accordingly, the university may not withhold the submitted pricing matrix if it was previously released, unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.104 of the Government Code for this information, section 552.104 is a discretionary exception under the Act and does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (stating that governmental body may waive section 552.104). Accordingly, if the submitted pricing matrix was previously released to the public, it may not now be withheld under section 552.104 of the Government Code. However, because third party interests can provide a compelling reason to withhold information, we will consider the applicability of GCA's arguments to the submitted information. Additionally, to the extent the pricing matrix was not previously released to the public, we address the university's argument against disclosure of this information, as well as the remaining information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from GCA on why the company's submitted information should not be released. Therefore, we have no basis to conclude GCA has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any portion of the submitted information on the basis of any proprietary interest GCA may have in it.

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 § 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* ORD 592 (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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). However, this office has determined in some circumstances section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to

section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

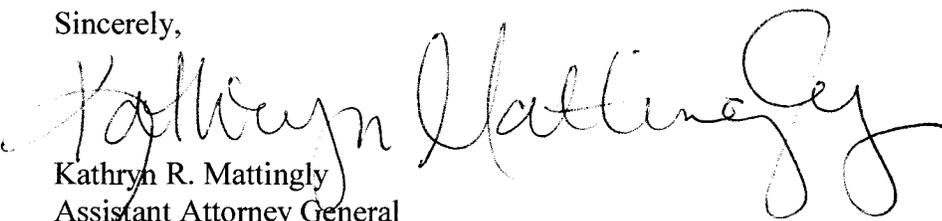
The information at issue contains a contract executed by the university. However, you inform us the submitted information relates to a current request for proposals ("RFP") for the same services covered by the information at issue. You state the bidding process for this RFP is ongoing and a winning bidder has not yet been selected. You argue because this bidding process ends only when a final executed contract is in place, release of the submitted information before that time would disadvantage the university in obtaining a fair contract. Based on your representations and our review, we find you have demonstrated the public release of the submitted information would cause specific harm to the university's interests in a particular competitive bidding situation. Thus, we conclude the submitted information may be withheld under section 552.104 of the Government Code until such time a new contract has been executed.

In summary, if the submitted pricing matrix was previously released to the public, the university may not now withhold it under section 552.104 of the Government Code. If the submitted pricing matrix was not previously released to the public, the university may withhold it under section 552.104 of the Government Code. In either case, the university may withhold the remaining submitted 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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 487574

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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