



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2013

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

OR2013-14345

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# 497052 (OGC# 150285).

The University of Texas at El Paso (the "university") received a request for all proposals submitted in response to request for proposals number 724-1217 and the evaluation matrix with scores for each proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of TicketsWest and Veritix. Accordingly, you state, and provide documentation showing, you notified TicketsWest and Veritix of the request for information and of the right of each to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from TicketsWest. 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(a). The purpose of section 552.104 is to protect a governmental body's interests 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). 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). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state the submitted information was submitted to the university in connection with a request for proposals to secure bids for a new contract to provide ticketing services for the university. You inform us the request for proposals at issue was subsequently cancelled, and the university anticipates an updated request for proposals for ticketing services will be posted for public bidding. You explain at that time, the university will begin the process of evaluating all bids and awarding a new ticketing services contract. You claim release of the information at issue would undermine the contract negotiation process because each potential bidder would have unfair insight into specific details of the initial responses and analysis. You argue this would allow potential bidders to unfairly manipulate future proposals to their advantage and make a deliberately low proposal to the university, which would impair the university's efforts at procuring and negotiating a future contract related to the upcoming request for proposals. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code.<sup>1</sup> *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).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining submitted arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 497052

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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TicketsWest  
201 West North River Drive  
Spokane, Washington 99201  
(w/o enclosures)

Mr. Guy Villa  
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