



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2013

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-16993

Dear Mr. Ernst:

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# 501259.

The City of Dallas (the "city") received a request for (1) information pertaining to communications involving a named city employee or employees of the Parks and Recreation Department and a named individual or a named company for a specified time period pertaining to the Elm Fork Athletic Complex (the "complex") or Request for Proposal ("RFP") #BLZ1312, excluding the city's RFP and the named company's bid proposal submitted in response to the RFP; and (2) sign-in logs, registers, or attendance lists for presentations or meetings relating to the operation and management of the complex or the RFP for a specified time period. You state the city will provide some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the release of the submitted information may implicate the interests of the named individual and F.J. Fuller & Associates (collectively, the "third parties"). Accordingly, you state, and provide documentation demonstrating, the city notified the third parties 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 correspondence from an attorney representing the third parties, who states the third parties do not object to the release of the

submitted information. We have reviewed the exception you claim and the submitted information.

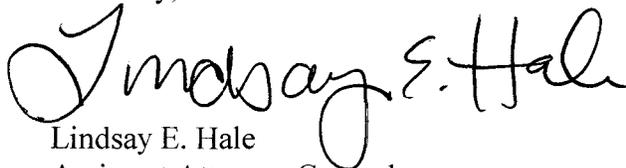
Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* 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 explain the submitted information pertains to the RFP for the operation and management of the complex. You state the city is still evaluating the proposals and has not executed a contract. You assert disclosure of the submitted information at this time would "compromise the city's negotiating position in the event the negotiations with the selected bidder fail and a new bidding process must be conducted." Based on your representations and our review, we conclude the city has demonstrated how release of the submitted information would harm its interests in a competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 until the contract is executed.

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

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 501259

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)