



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2014

Mr. Paul Webb
Counsel for the City of Wharton
Paul Webb, P.C.
221 North Houston Street
Wharton, Texas 77488

OR2014-01068

Dear Mr. Webb:

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# 511457.

The City of Wharton (the "city"), which you represent, received a request for the "[r]anking/[s]coring tabulation" of three companies and the qualifications submitted to the city by PEPCO Energy Services ("PEPCO") in response to the city's solicitation for energy service companies. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, we understand you to contend the release of the submitted information may implicate the interests of PEPCO. Accordingly, you inform our office the city notified PEPCO of the request for information and of its right to submit arguments stating why its 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 considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information pertaining to requested "[r]anking/[s]coring tabulation." Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code

§§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from PEPCO explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the third party's interests, and none of the submitted information may be withheld on that basis. *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.

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 state the release of the submitted information "would give an advantage to a competitor/bidder which demonstrates potential harm to its interests in competitive situations." Beyond this general assertion, you have not provided specific arguments explaining how releasing the information at issue will harm the city's interests in a particular competitive situation. Consequently, we conclude the city may not withhold the submitted information under section 552.104 of the Government Code. As no further exceptions to disclosure are raised, the city must release the submitted information.

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# 511457

Enc. Submitted documents

c: Requestor
(w/o enclosures)

PEPCO Energy Services
c/o Mr. Paul Webb
Paul Webb, P.C.
221 North Houston Street
Wharton, Texas 77488
(w/o enclosures)

