



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2014

Ms. Tracey M. Smith
Welder Leshin Lorenz McNiff Buchanan Hawn, LLP
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2014-03462

Dear Ms. Smith:

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# 515294.

The Port of Corpus Christi Authority of Nueces County, Texas (the "authority"), which you represent, received a request for specified categories of information pertaining to Harbor Island, including communications, records retention policy, and environmental studies. The authority states it has provided some of the requested information to the requestor, but claims the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.137 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, you inform us the authority asked the requestor to clarify some of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304

¹Although you also raise section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the authority no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

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.

S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You state the authority has not received a response to the request for clarification. Therefore, the authority is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the authority must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387.

Next, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-19042 (2013). In Open Records Letter No. 2013-19042, we determined the authority may withhold the requested information under section 552.104 of the Government Code. However, you inform us that on the date the authority received the request for information, the company at issue had withdrawn its offer to purchase the property. Therefore, we find the facts and circumstances on which Open Records Letter No. 2013-19042 was based have changed. Accordingly, the authority may not rely on Open Records Letter No. 2013-19042 as a previous determination and may not withhold any of the requested information in accordance with that ruling.

We next note some of the submitted information is subject to section 552.022(a)(3) of the Government Code, which reads as follows:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Although you assert the information subject to section 552.022 is excepted from disclosure under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the authority may not withhold the information at issue under section 552.111. However, you also claim section 552.104 of the Government Code for this information. Information encompassed by section 552.022(a)(3) may be withheld under section 552.104. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)).

Therefore, we will consider your argument under section 552.104 for this information. We will also consider your arguments under sections 552.104, 552.111, and 552.137 for the remaining information.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 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). Furthermore, section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no “competitors” for that contract. *See* Open Records Decision No. 331 at 2 (1982).

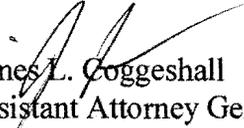
You inform us the requested information pertains to property that has been for sale for over two years, and remains for sale. You state the authority published a notice requesting sealed bids to purchase the property at issue on July 20, 2013, and the deadline to submit bids was August 16, 2013. You also state only one company submitted a bid, but “[s]ince such date, there has been litigation involving the [bidder] that resulted in [the bidder]’s withdrawal of its bid to purchase the Property.” You assert the submitted information is excepted from disclosure under section 552.104 because “if other parties interested in buying [or] leasing the Property learn what other prospective purchasers have offered to pay for [it], then . . . it will be difficult to attract the highest offers possible, as such parties would have the unfair advantage in knowing [the authority]’s position on various material business points” and that releasing the information “will result in fewer entities willing to pursue similar deals with [the authority] in the future.” Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the submitted information. Accordingly, the authority may withhold the submitted information under section 552.104 of the Government Code.³

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.

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 515294

Enc. Submitted documents

c: Requestor
(w/o enclosures)