



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2014

Ms. Cynthia Tynan
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-13109

Dear Ms. Tynan:

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# 531026 (OGC# 155967).

The University of Texas Health Science Center at Houston (the "university") received a request for the bid tabulation sheet and award information for the most recent award made for pest management. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released to the requestor.¹ *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).

¹The third parties notified pursuant to section 552.305 are: Environmental Coalition, Inc., Modern Pest Control, and Orkin, Inc. ("Orkin").

We have received comments from Orkin. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code protects 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 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). However, in some situations, 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); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state the submitted information relates to an existing contract executed by the university. However, you explain the university is currently in an ongoing request for proposals (“RFP”) bidding process for the same services. Further, you state the university has not executed a final agreement relating to the current RFP process. You contend release of the submitted information at this time would disadvantage the university’s ability to obtain a fair contract related to the ongoing RFP. Based on your representations and our review, we conclude the university may withhold the submitted information under section 552.104 of the Government Code, until such time as the contract has been executed.²

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

²As our ruling is dispositive, we need not address Orkin’s arguments against disclosure.

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

Sincerely,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 531026

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Del Lawson
Modern Pest Control
1110 East Avenue
Katy, Texas 77493
(w/o enclosures)

Mr. Dan Porter
Environmental Coalition
P.O. Box 1568
Stafford, Texas 77497
(w/o enclosures)

Mr. Steven H. Rubin
Senior Managing Attorney
Rollins, Inc.
2170 Piedmont Road N.E.
Atlanta, Georgia 30324
(w/o enclosures)