



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2014

Ms. Danielle Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-19848

Dear Ms. Folsom:

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# 541861 (GC Nos. 21701 and 21702).

The City of Houston (the "city") received two requests from one requestor for (1) information pertaining to the city's proposed "One Bin for All" program and corresponding grant and (2) letters sent from the Office of the Mayor, or other city departments, to twelve specified third parties during specified periods of time. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the interests of Abengoa Bionergy of Texas, L.L.C. ("Abengoa"); EcoHub-Houston, L.L.C. ("Eco-Hub"); Mustang Power; Republic Services ("Republic"); and WCA Waste Corporation ("WCA"). Accordingly, you notified these 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 comments from Abengoa, Eco-Hub, Republic, and WCA. We have

considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

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 information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted information pertains to an ongoing competitive bidding process for creation of the One Bin for All Program. You state the procurement process is ongoing and the contract has not been awarded. Additionally, you assert release of the information at issue could result in proposers being less likely to present competitive submissions and less willing to negotiate terms in a manner favorable to the city. Based on your representations, we conclude the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹We 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.

²As our ruling is dispositive, we need not address the remaining 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 541861

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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