



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2014

Ms. Maureen Franz
Deputy Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2014-21874

Dear Ms. Franz:

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# 545585.

The Texas Health and Human Services Commission (the "commission") received two requests for the Advanced Planning Document associated with the commission's Enterprise Data Warehouse project, as well as the names of the staff assigned to work on the project and the total number of hours the staff has worked on the project in years 2013 and 2014. We understand the commission does not have any responsive information regarding the total number of hours the staff has worked on the project in years 2013 and 2014.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from 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 to obtain more favorable offers. *See* Open Records Decision No. 592 (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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and a contract has been executed. Open Records Decision No. 541 (1990).

You state the request for proposals associated with the Enterprise Data Warehouse project has been cancelled and no final contract award will be made pursuant to this solicitation. You further state the commission plans to re-issue a request for proposals for the project at a later date, at which time the commission will enter into competitive negotiations with several bidders. You assert the release of the submitted information, which contains details regarding the other respondents' competitive capabilities, would harm the commission's bargaining position when it enters into contract negotiations with other bidders. Based on your representations and our review, we conclude the commission has demonstrated the release of the submitted information would harm its interests in a competitive situation. Thus, the commission may withhold the submitted information under section 552.104 of the Government Code.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 545585

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)