



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2014

Ms. Karen Klaus  
Public Information Coordinator  
State Office of Risk Management  
P.O. Box 13777  
Austin, Texas 78711-3777

OR2014-23021

Dear Ms. Klaus:

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# 548223.

The State Office of Risk Management ("SORM") received a request for the property broker assignment resulting from RFP #479-14AH-ISS for broker services.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you indicate release of this information may implicate the proprietary interests of a third party. Accordingly, you indicate you notified Arthur J. Gallagher Risk Management Services, Inc. ("Gallagher") of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *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). We have received comments from Gallagher. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>We note SORM sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. 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 at 9 (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 from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and 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 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, the submitted information consists of Gallagher’s proposal to SORM, and as a result of the submitted proposal, a contract was awarded to Gallagher. You state this is a recurring procurement, explaining the underlying policies are quoted and renewed annually and as required. You also inform our office that due to the economic variables of insurance and reinsurance markets and the continuing service nature of this procurement, SORM has reserved the right to terminate the award at any time duties or obligations are not fulfilled. Thus, you explain the RFP may be required to be reissued prior to the expiration of the total five-year term based on non-renewal or termination. You argue that release of the submitted information could significantly jeopardize SORM’s future bargaining position in the recurring solicitation process by assisting bidders in determining the lowest level of service that might suffice to be awarded the contract. You also assert releasing the submitted information would give all future bidders an advantage and cause harm to SORM in its ongoing procurement process. Based on your representations and our review of the information at issue, we agree that SORM may withhold the submitted information under section 552.104 of the Government Code.<sup>2</sup>

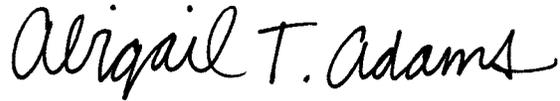
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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](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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 548223

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Susan G. Conway  
For Arthur J. Gallagher Risk Management  
Graves Dougherty Hearon & Moody  
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(w/o enclosures)