



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 12, 1998

Ms. Judy Ponder  
General Counsel  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR98-0692

Dear Ms. Ponder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113882.

The General Services Commission (the "commission") received an open records request for "the contract document for the University of Houston Main Campus, Performance Contract Project." You contend the requested information is excepted from required public disclosure pursuant to section 552.104 of the Government Code. You have also sought a decision from this office pursuant to section 552.305 of the Government Code to determine whether the requested information implicates a third party's privacy or property interests.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the letting of a contract.

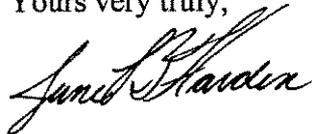
It is not clear to this office whether the information at issue pertains to an on-going competitive bidding situation. If the University of Houston has not let a contract for the energy conservation measures, the commission may withhold the requested proposal in its entirety pursuant to section 552.104 of the Government Code.

If the contract has been let, however, we conclude that section 552.104 is inapplicable in this instance. If such is the case, we must address whether the proposal is otherwise excepted from required public disclosure. Because you requested an open records decision pursuant to section 552.305 of the Government Code, this office notified representatives of HL&P Energy Services ("HL&P"), the company that submitted the proposal, that we received your request for an open records decision regarding their proposal. *See* Open Records Decision No. 575 (1990). In our notification, this office requested an explanation as to why any of the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation within a reasonable time, this office would instruct the commission to disclose the information.

Although HL&P timely responded to our notification and identified two pages from a spreadsheet that it considers "proprietary and confidential in nature," it has provided this office with no explanation as to which of the act's exceptions to disclosure apply to this information or why the information should otherwise be withheld from the public. We therefore conclude that HL&P has not met its burden under section 552.305 to demonstrate that the requested information is excepted from required public disclosure. Accordingly, if the contract for the energy conservation measures has been let, the commission must release the requested proposal in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/alg

Ref: ID# 113882

Enclosures: Submitted documents

cc: Mr. Rich Oliver  
Landis & Staefa, Inc.  
11500 Metric Boulevard, Suite 410  
Austin, Texas 78758  
(w/o enclosures)

Ms. Susan A. Kramer, P.E.  
Product Manager  
HL&P Energy Services Company  
P.O. Box 4300  
Houston, Texas 77210-4300  
(w/o enclosures)