



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 9, 1998

Mr. Michael R. Aulick  
Transportation and Planning Director  
Austin Transportation Study  
P.O. Box 1088  
Austin, Texas 78767-1088

OR98-2639

Dear Mr. Aulick:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119380.

The Austin Transportation Study ("ATS") received a request for "any and all proposals submitted from engineers and/or engineering firms" in response to "the ATS request for proposal (RFP) No.: ATS-01-FY 98." In response to the request, you submit to this office for review the information which you assert is responsive. You assert that "[p]ursuant to sections 552.301 and 552.305 of the Government Code, ATS requests a decision . . . that the requested information is excepted from required release by sections [sic] 552.104 of the Government Code." We have considered the arguments and exception you raise and reviewed the submitted information.<sup>1</sup>

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. Open Records Decision No. 541 at 4 (1990).

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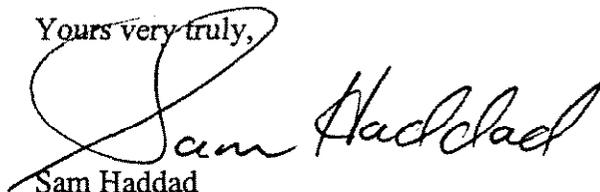
<sup>1</sup>Generally, information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989), 468 (1987) (interagency transfers of information are not considered "public" disclosures). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. See Open Records Decision No. 516 (1989).

You state that “[a] contract has not been awarded, and will not be awarded until after ATS Policy Advisory Committee takes action on approving a consultant.” Based on your representations, we conclude that you may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once the bidding process is completed, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 at 5 (1990).

In addition, once the bidding process is completed and section 552.104 is no longer applicable, should there be a subsequent request for this same information, we advise ATS to seek a ruling from this office since the submitted information may implicate the property and privacy rights of a third party.<sup>2</sup> See Gov’t Code §§ 552.110, 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released).

As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions at this time. 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 119380

Enclosures: Submitted documents

cc: Mr. Edward S. Jones  
Texas Board of Professional Engineers  
P.O. Drawer 18329  
Austin, Texas 78760-8329  
(w/o enclosures)

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<sup>2</sup>You also note that “[t]he proposers have not marked any information in their proposals as proprietary.” We note that, in general, information is not confidential under the Open Records Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

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