



May 14, 1999

Ms. Judith Doran
Deputy Open Records Coordinator
Texas Department of Parks & Wildlife
4200 Smith School Road
Austin, Texas 78744-3291

OR99-1336

Dear Ms. Doran:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124432.

The Texas Department of Parks and Wildlife (the "department") received a request for a variety of information concerning the "location and construction of facilities for TPW World Birding Center and Satellite locations. . . . including details about property size, location and value." In response to the request, you submit to this office for review the information which you assert is responsive. You state that the department "is furnishing [the requestor] with the Request-for-Proposal," which contains requested information about "'major deciding factors' in the bid process." You contend, however, that the submitted records are excepted from required public disclosure by sections 552.104 and 552.105 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

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).

You state that the department "has determined that release of proposals before final bid review and award of contract would taint the selection process." You also contend that "release of location and size of property and estimated value of property prior to the public

announcement may affect real property value and price negotiations.” 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 and the terms of the agreements have been finalized, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 at 5 (1990).

As we resolve your request under section 552.104, we need not specifically address your other claimed exception at this time.¹ 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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124432

encl: Submitted documents

cc: Mr. Adam Bourque
Progress Times
P.O. Box 353
Mission, Texas 78572
(w/o enclosures)

¹We also note that, 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 the department to seek a ruling from this office since the submitted information may implicate the property and privacy rights of a third party. *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).