



July 21, 1999

Ms. Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR99-2050

Dear Ms. Stiner:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126788.

The Texas Department of Housing and Community Affairs (the “department”) received four requests for copies of 1999 Low Income Tax Credit Applications. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also contend that the information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 2306.676 and 2306.678 of the Government Code. We have considered the exceptions you claim and reviewed a representative sample of the documents at issue.¹

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of this exception is to protect a governmental body’s interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Governmental bodies may withhold bid information under section 552.104 while

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You explain that the application process for tax credits is competitive at this time. You state that

release of any part of the low income housing tax credit application during this competitive period would put a competitor for tax credits at an advantage over others This would interfere with TDHCA's assurance of a fair and equal review process of the applications and would potentially harm TDHCA's interest in competitively awarding tax credits.

Based upon these representations, we conclude that section 552.104 is applicable to the requested applications. The department may withhold the applications from disclosure under section 552.104 until it awards the tax credits.

Because we are able to resolve this matter under section 552.104, we do not address your additional arguments against disclosure. 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126788

Encl. Submitted documents

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