



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 8, 2009

Mr. Charles K. Barrow  
Naman, Howell, Smith & Lee  
P.O. Box 1470  
Waco, Texas 76703

OR2009-06201

Dear Mr. Barrow:

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# 343716.

The Economic Opportunities Advancement Corporation of Planning Region XI ("EOAC") received a request for information relating to EOAC's weatherization contractor from 2008. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state that release of this information may implicate the proprietary interests of Jarrel Shipp d/b/a Complete Insulation ("Complete"). Accordingly, you state, and provide documentation showing, that you notified Complete of the request and of its opportunity to submit comments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered your arguments and comments received from a representative of Complete, and we have reviewed the submitted information.

Section 552.104 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 a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990).

You inform this office that EOAC has recently requested bids for 2009 weatherization work. You explain to this office that release of the submitted 2008 contract rates would allow a new service provider to adjust its offered price to EOAC and undercut the current price. You represent that this price adjustment would harm EOAC's competitive position and give a competitive advantage to the new service provider. Based on your representations, we find that release of the information at issue would give an advantage to a competitor or bidder. Accordingly, EOAC may withhold the information at issue under section 552.104 of the Government Code. As our ruling is dispositive, we need not address Complete's arguments against disclosure.

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.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/sdk

Ref: ID# 343716

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Peter K. Rusek  
Counsel to Complete Insulation  
Sheehy, Lovelace & Mayfield, P.C.  
510 North Valley Mills Drive, Suite 500  
Waco, Texas 76710  
(w/o enclosures)