



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2009

Mr. Scott A. Kelly  
Interim General Counsel  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2009-08188

Dear Mr. Kelly:

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# 346014.

The Texas A&M University System (the "university") received a request for five categories of information related to a specified construction project. You state that you will release a portion of the requested information. You also state that the university has no information responsive to portions of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

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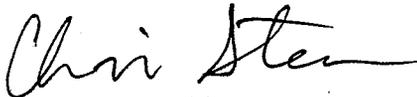
<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

You state that the university rejected all bids for the project at issue and did not award or make a recommendation to award a contract for the project. You also state that the university has revised the project specifications and has rebid the project at issue. You claim that "release of the requested proposals and evaluation criteria would . . . harm [the university's] ability to negotiate a final agreement" for the project at issue. Based on your representations and our review of the submitted information, we conclude that the university has shown that release of the information at issue will bring about specific harm to the university's interests in this particular competitive bidding situation. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code.

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 346014

Enc. Submitted documents

c: Requestor  
(w/o enclosures)