



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2009

Ms. Lisa Calem-Lindström  
Public Information Coordinator/Legal Assistant  
Texas Facilities Commission  
1711 San Jacinto Boulevard  
Austin, Texas 78701

OR2009-16043

Dear Ms. Calem-Lindström:

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# 361220.

The Texas Facilities Commission (the "commission") received a request for all correspondence to or from the commission regarding a specified lease, and a specified agreement. You state you do not object to the release of the proposal submitted by the requestor's company. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104 of the Government Code 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). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and is in effect. *See id.* at 5.

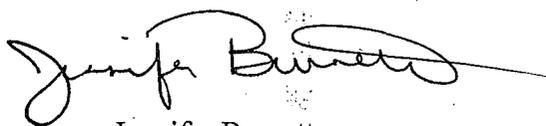
You state the submitted information pertains to a request for proposals for lease space on behalf of the Texas Higher Education Coordinating Board (the "board"). *See* Gov't Code

§ 2167.0021(a) (providing that the commission shall lease space for use of a state agency on the basis of obtaining the best value for the state). You inform this office that the commission is involved in an ongoing bidding solicitation, and that the requestor is a representative of one of the bidders. You assert that release of the submitted information during lease solicitation would prevent the commission from being able to negotiate the best proposal for the board, and would give the requestor an advantage over other bidders in this solicitation. You state that, if no award is made to the current bidders, the commission may need to issue a new solicitation. In that instance, you argue the release of the submitted information would disadvantage the commission in new negotiations. Based on your representations and our review, we conclude the commission may withhold the submitted information under section 552.104 of the Government Code, until such time as the agreement has been finalized. As our ruling is dispositive, we need not address your remaining 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 361220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)