



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-17026

Dear Ms. Chatterjee:

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# 362926.

The University of Texas at Dallas (the "university") received a request for a copy of all documents and materials submitted to the university in response to request for proposal for bookstore services, except for the response of a specified company, and the resulting contract to manage the campus bookstore. You state the university does not have a contract to manage the campus bookstore at this time.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of Follett Higher Education Group and M.T. Busse, Inc. ("M.T. Busse"). Accordingly, you state, and provide documentation showing, that the university notified the third parties of the request and of their right to submit arguments stating why their information should not be released. 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 applicability of exception to disclosure under the Act in certain circumstances). We have received comments from M.T. Busse. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

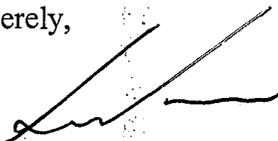
a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state that while the bidding has closed, the contract for bookstore services has not been executed. You also state negotiations are ongoing and the university may "have to revisit other submitted proposals to determine an alternate choice from the remaining vendors." You further state that because the contract has not been executed, release of the submitted information at this time would place the university at a disadvantage in obtaining a fair contract should the initial negotiations fail. Based on your representations and our review, we conclude the university has demonstrated how release of the submitted information would harm its interests in a competitive situation. Accordingly, the university may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.²

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

²Because the department's section 552.104 assertion is dispositive, we do not consider arguments under section 552.110 from M.T. Busse for this information.

Ref: ID# 362926

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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