



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Eric D. Bentley  
Assistant General Counsel  
Office of the General Counsel  
University of Houston System  
311 East Cullen Building  
Houston, Texas 77204-2028

OR2010-06093A

Dear Mr. Bentley:

This office issued Open Records Letter No. 2010-06093 (2009) on April 28, 2010. We have examined this ruling and determined that there was an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 28, 2010. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 377336.

The University of Houston System (the "system") received three requests for information related to a specified bid for dorm mattresses. You claim that the responsive information is excepted from disclosure under section 552.104 of the Government Code. You also state that this request for information may implicate the proprietary interests of third parties.<sup>1</sup> You inform us that the interested parties were notified of this request for information and of their

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<sup>1</sup>You inform us that the interested third parties are Dormlife, L.L.C.; Dynasty Consolidated Industries; Goodrum International; Houston Mattress Factory; KLN Steel Products Co.; and Texas Correctional Industries.

right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and 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. *See* Open Records Decision No. 592 (1991). Moreover, 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 except information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the system is currently negotiating with the successful bidder, but the contract has not been executed. You also explain that if negotiations break down, release of the information would jeopardize the system's bargaining position if it were to enter into negotiations with another bidder. Based on your representations and our review, we conclude the submitted information may be withheld under section 552.104 of the Government Code. However, we note that this information may no longer be withheld under this exception once the contract has been executed and is in effect. *See* ORD 541 at 5.

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

Ref: ID# 377336

c: 3 Requestors

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