



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2011

Mr. Tony Gilman
Chief Executive Officer
Texas Health Services Authority
P.O. Box 1564
Austin, Texas 78767-1564

OR2011-04686

Dear Mr. Gilman:

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# 413889.

The Texas Health Services Authority (the "authority") received a request for all applications submitted in response to Request for Applications ("RFA") No. 529-11-0062 for Local Health Information Exchange. You claim the submitted applications are excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from the Health and Human Services Commission (the "commission"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of 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 awarded. *See* Open Records Decision No. 541 (1990).

You seek to withhold the submitted applications under section 552.104. You inform us the authority is working with the commission to select the companies that will receive grant contracts under the RFA at issue to implement and operate local health information exchange networks. You state the authority and the commission are currently reviewing and evaluating the submitted applications, and contracts have not been awarded. You assert release of the application information at this stage in the process would give each applicant an unfair advantage.

You explain that, in addition to application intake, review, and approval, the commission is responsible for contract negotiations and contract implementation pertaining to the RFA. We have received comments from the commission stating release of the applications at this time would harm the commission's ability to negotiate final contracts. Based on the authority's and the commission's representations and our review, we conclude the authority has demonstrated release of the applications could harm the authority's and the commission's interests with respect to the RFA at issue. Therefore, the authority may withhold the submitted applications 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 413889

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Carey E. Smith
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(w/o enclosures)