



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2012

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston
311 Ezekiel Cullen Building
Houston, Texas 77204-2028

OR2012-01669

Dear Mr. Bentley:

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# 444127.

The University of Houston (the "university") received a request for six categories of information pertaining to the Cougar Village II Student Housing Project.¹ You claim that the requested information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released.² See Gov't Code § 552.305(d) (permitting interested third party to

¹You inform us the university provided the requestor with an estimate of charges and a request for a deposit for payment of these charges on November 2, 2011. See Gov't Code §§ 552.2615, .263(a). You state the university received a deposit for payment of the anticipated costs on November 10, 2011. Thus, November 10, 2011 is the date on which the university is deemed to have received the request. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond).

²The third parties notified pursuant to section 552.305 are: Austin Industries; Collegiate Builders; E.E. Reed Construction, L.P.; Harrell Contracting Group, L.L.C.; Hensel Phelps Construction Company; Hoar Construction, L.L.C.; Linbeck; Manhattan Construction Group; Mapp Construction, L.L.C.; McCarthy Building Companies; Miner-Dederick Construction; Pepper Lawson Construction; Satterfield & Pontikes Construction, Inc.; SpawGlass Construction Corp.; Whiting-Turner; and Turner Construction Company.

submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 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 exceptions you claim and reviewed the submitted representative sample of information.³ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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). 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. 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 executed. Open Records Decision Nos. 306 (1982), 184 (1978) (section 552.104 no longer applicable when bidding had been completed and contract is in effect).

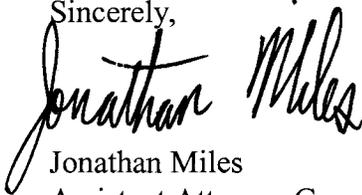
You state the submitted information pertains to the university's bidding process for the Cougar Village II Student Housing Project. You inform us the university is "currently engaged in negotiation with Austin Commercial ("Austin") to finalize the conditions by which Austin will provide the [u]niversity with design build services[.]" You state there is no contract between Austin and the university at this time and inform us that until such contract is executed, the entire bidding process is still open. You also inform us release of the submitted information at this time would give bidders an unfair advantage and would cause harm to the overall bidding process for the project. The requestor asserts that contract has already been awarded and that the material terms of the contract between the winning bidders and the university have been agreed upon. We note the question of whether the contract has been awarded is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Record Decision No. 522 at 4 (1990). Thus, based on the university's representations, we conclude the university may withhold the submitted information at this time under section 552.104(a) of the Government Code. We note the university may no longer withhold this information under section 552.104 once the related contract has been executed and is in effect. *See* ORD 541. As our ruling is dispositive, we need not address your remaining argument against disclosure.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 444127

Enc. Submitted documents

c: Requestor
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