



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2013

Ms. Erin Perales
General Counsel
The Houston Municipal Employees Pension System
1201 Louisiana, Suite 900
Houston, Texas 77002

OR2013-02358

Dear Ms. Perales:

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# 478493.

The Houston Municipal Employees Pension System (the "system") received a request for the current contract and associated fees for the system's current custodian. You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of State Street. Accordingly, you have notified this third party of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to 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 the circumstances). We have received comments from State Street. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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 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) (discussing statutory predecessor). 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 information from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

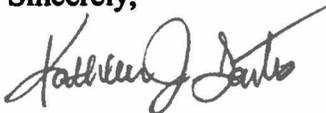
However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

In this instance, you contend release of the compensation and fee provisions in Exhibit B, which you have marked, would significantly hinder the system's ability to negotiate and compete for better rates from providers of custody services. You state the system will make requests for proposals in the future for custody services. Thus, you assert the release of the information at issue "could give the requestor a competitive advantage in the next round of proposals for the same type of services." Based on your representations, we find you have demonstrated public release of the compensation and fee provisions in Exhibit B would cause specific harm to the system's interests in particular competitive situations. Therefore, the system may withhold the information you have marked in Exhibit B from the requestor under section 552.104 of the Government Code.¹ As no exceptions to disclosure are raised for the remaining information, it must be released.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

¹As our ruling is dispositive, we need not address the remaining argument against disclosure.

Ref: ID# 478493

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)