



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2013

Ms. Shawn Jamail
Interim Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2013-19013

Dear Ms. Jamail:

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# 504368.

The Capital Metropolitan Transportation Authority (the "authority") received two requests for the proposal submitted by MuniServices, LLC ("MuniServices") for a specified request for proposals. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ You also state the release of the submitted information may implicate the proprietary interests of MuniServices. Accordingly, you notified MuniServices of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹We note that although you also raise sections 552.301, 552.303, and 552.305 of the Government Code, these are not exceptions to disclosure under the Act. *See* Gov't Code §§ 552.301 (providing procedural requirements for requesting ruling), .303 (pertaining to delivery of requested information to Attorney General, disclosure of requested information, and Attorney General request for submission of additional information), .305 (addressing the procedural requirements for notifying third parties that their interests may be affected by a request for 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. This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). 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 bids from disclosure after bidding is completed and the contract has been executed. *See id.* We note the submitted information pertains to a contract that has already been awarded. You state release of the submitted information would provide an advantage to a competitor or bidder but provide no further explanation. Therefore, because the authority failed to demonstrate how release of the submitted information would result in actual or specific harm in a particular competitive situation, the authority may not withhold the submitted information under section 552.104 of the Government Code.

Although the authority also argues that the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a)-(b). Thus, we do not address the authority’s argument under section 552.110. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from MuniServices. Thus, MuniServices has failed to demonstrate it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the authority may not withhold the submitted information on the basis of any proprietary interest MuniServices may have in the information. As no further exceptions to disclosure have been raised, the submitted information 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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 504368

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

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