



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2013

Ms. Danielle Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2013-19023

Dear Ms. Folsom:

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# 504132 (GC Nos. 20765, 20768, 20769, 20774, and 20804).

The City of Houston (the "city") received five requests for information pertaining to the city's Disaster Recovery Round II Affordable Housing Request for Proposals.<sup>1</sup> You state the city does not possess documents responsive to portions of the requests.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of this information may implicate the interests of Realtex Development Corporation; Bayou Fifth Investments; The Brownstone Group, Inc.; Fifth Ward Community Redevelopment Corporation; ITEX Property Management, LLC; Avenue Community Development Corporation; and AHG-C Hardy Residential, LP. Accordingly,

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<sup>1</sup>We note the city sought and received clarification of the information requested by one of the requestors. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

you have notified these third parties of the requests for information and their rights to submit arguments to this office as to why the requested 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); 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 an attorney on behalf of Realtex Development Corporation. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code exempts from required 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 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 exempt information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted information pertains to an ongoing competitive bidding process. You state a final contract has not been approved. Additionally, you assert release of the submitted information, before a final contract is approved, could provide the bidders with a competitive advantage and harm the city's ability to select the most advantageous proposal. Based on your representations, we conclude the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.<sup>3</sup> *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in advantage to certain bidders at the expense of others and could be detrimental to public interest in contract under negotiation).

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](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

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 504132

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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Mr. Doak Brown  
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Ms. Kathy Flanagan Payton  
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Mr. Chris Akbari  
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Ms. Mary Lawler  
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