



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2013

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

OR2013-19727

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# 505371 (GC No. 20794).

The City of Houston (the "city") received a request for copies of all responses to the "One Bin for All" request for qualifications submitted to the city. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the city notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.¹ 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹The third parties notified pursuant to section 552.305 are: Abengoa Bioenergy; ACS Industrial Services, Inc.; Envision Waste Services, L.L.C.; Fair Energy Clean Fuel Solutions; INEOS Bio USA, L.L.C.; KnightHawk ETEC, Inc. ("KnightHawk"); Mustang Renewable Power Ventures, L.L.C.; Organic Energy Corporation; Organic Waste Remediation, L.L.C.; Republic Services, Inc. ("Republic"); TRITgen, L.L.C.; and WCA Waste Corporation ("WCA").

explain applicability of exception in certain circumstances). We have received comments from KnightHawk, Republic, and WCA. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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 executed. *See* Open Records Decision No. 541 (1990).

You state the submitted information relates to an ongoing competitive bidding process for the "One Bin For All" recycling contract with the city. You state, although the solicitation has closed, a final contract has not been approved by the city council. You further state release of the information at issue would negatively impact negotiations between the city and the selected bidder or any future bidders. Based on your representations and our review, we agree the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not consider the third parties' 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 505371

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Shauna Askins
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(w/o enclosures)

Republic Services, Inc.
c/o Mr. José de la Fuente
Lloyd, Gosselink, Rochelle & Townsend, P.C.
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Austin, Texas 78701
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WCA Waste Corporation
c/o Mr. Alberto P. Cardenas, Jr.
Vinson & Elkins, L.L.P.
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