



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2014

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

OR2014-01416

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# 516211.

The University of Houston (the "university") received a request for the winning proposal for a specified RFP. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You further state the proprietary interests of The Stelter Company might be implicated by the request. Accordingly, you notified the affected third party 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 exception you claim and reviewed the submitted representative sample of information.¹

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The

¹We assume 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 those records contain substantially different types of information than those submitted to this office.

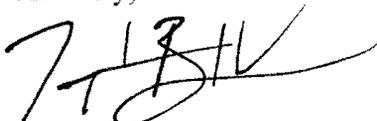
purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body). 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 university issued the RFP that is the subject of this request in order to solicit proposals for services related to marketing and website development. You explain that a competitive bidding process occurred, and the university has selected one company as the winning bidder. However, you further state the process for negotiating a final contract is underway, and the university has not executed a contract. Thus, you argue release of the requested information could harm the university's negotiating position. Based on these representations and our review, we agree the university may withhold the requested information under section 552.104 of the Government Code until such time as a contract has been executed. *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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/eb

Ref: ID# 516211

Enc. Submitted documents

c: Requestor
(w/o enclosures)