



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2014

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

OR2014-06945

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# 520959 (GC No. 21164).

The City of Houston (the "city") received a request for fourteen categories of information pertaining to a specified contract. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you state release of some of this information may implicate the proprietary interests of IHS Global Insight ("IHS") and McKinsey & Company, Inc. ("McKinsey"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from McKinsey. We have reviewed the submitted arguments and 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(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 except information pertaining to a completed bidding process for which a 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 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

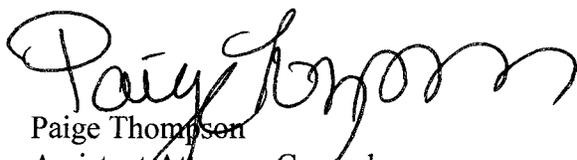
You state the information in Exhibits 2, 3, and 4 relates to an ongoing selection process by the city's chemical negotiations team. You state the city's chemical negotiation team is in ongoing negotiations with the requestor's company to renegotiate the city's purchase of ferric sulfate. You state if the city "cannot finalize a price reduction agreement with [the requestor's company] or any of its other chemical vendors, then the [c]ity would have to seek re-bid for the contract with another entity." You further state the information at issue relates to chemical purchases by the city, which are bid on a recurring basis. You assert if the information at issue was released before a price reduction agreement is reached, the city's "negotiating position will be compromised because new proposers will have the advantage of knowing the pricing analysis and details for ferric sulfate and other chemicals, and what the [c]ity was willing to negotiate on several occasions." You further assert the city's "interests would be greatly damaged in any later attempts to obtain favorable offers regarding the purchase of ferric sulfate or other chemicals." You argue the release of the information at issue "would present a clear threat of harm to the [c]ity's ability to obtain the lowest price possible in the current or any future related bidding process." Based on your representations and our review, we find you have demonstrated public release of the information in Exhibits 2, 3, and 4 would cause specific harm to the city's interests in a particular competitive bidding situation. Therefore, the city may withhold the information in Exhibits 2, 3, and 4 under section 552.104 of the Government Code.¹

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.

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

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 520959

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Melissa Milstead
Associate General Counsel
McKinsey & Company, Inc.
1200 19th Street NW, Suite 1100
Washington, D.C. 20036
(w/o enclosures)

Ms. Emily Crowley
IHS Global Insight
1150 Connecticut Avenue NW, Suite 401
Washington, D.C. 20036
(w/o enclosures)