



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2014

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

OR2014-11369

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# 527907 (GC No. 21344).

The City of Houston (the "city") received a request for all e-mails to and from the Office of the Mayor with any of the specified phrases during the specified time period. You claim the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.131 of the Government Code. You also state you notified United Airlines ("United") of the request for information and of its right to submit arguments to this office as to why the submitted information 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 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." 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 and 3 relates to ongoing negotiations pertaining to the redevelopment of portions of the city's airport. You state the submitted information reveals the city's position in the negotiation process and includes recommendations, an analysis of the facilities, facts and figures, and specific points of interest that will be used by the city during the negotiation process. You further state the information at issue would be of value to interested parties. You explain the release of this information before an agreement has been signed would adversely impact the city's bargaining position "by providing competing parties the competitive advantage of knowing what the [c]ity will accept, what it will concede, and its plan for achieving its objectives for redevelopment." Based on your representations and our review, we find you have demonstrated public release of the submitted information would cause specific harm to the city's interests in a particular competitive bidding situation. Therefore, the city may withhold the submitted information 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.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

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

Ref: ID# 527907

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Gavin Molloy
Managing Director of Airport Affairs
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(w/o enclosures)