



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2014

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East 5th Street
Austin, Texas 78702

OR2014-13209

Dear Ms. Butcher:

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# 531356.

The Capital Metropolitan Transportation Authority (the "authority") received a request for all of the submittals and proposals sent to the authority in response to a request for proposals for the development of the Plaza Saltillo tract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the information we have marked is not responsive to the instant request for information because it was created after the date the authority received the request. This ruling does not address the public availability of non-responsive information, and the authority is not required to release non-responsive information in response to this request.

Initially, you inform us some of the requested information is the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-07810 (2014). We understand the law, facts, and circumstances on which the previous ruling was based have not changed. Therefore, to the extent the requested information is identical to the information ruled on in the previous ruling, we conclude the authority may rely on Open Records Letter No. 2014-07810 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records

Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As you inform us portions of the submitted information did not exist or were not in the authority's possession at the time of the prior request, we will address the submitted arguments against disclosure.

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) (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).

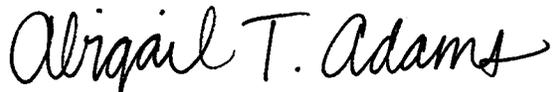
You state the submitted information relates to the authority's specified request for proposals. You state the request for proposals for the development of the specified property was issued on October 1, 2013 and the authority's board of directors was scheduled to make a decision with respect to this request for proposals in June 2014. You state that as of the date of the request, the request for proposals is an open solicitation currently under consideration. You assert release of the offers and proposals submitted thus far in response to the RFP would provide an advantage to a competitor or bidder if released and could pose significant harm to the authority in attempts to secure the most favorable offer. Accordingly, the authority may withhold the submitted information under section 552.104 of the Government Code.

In summary, to the extent the responsive information is identical to information previously requested and ruled upon by this office, the authority may rely on Open Records Letter No. 2014-07810 as a previous determination and withhold the responsive information in accordance with that ruling. The authority may withhold the remaining information under section 552.104 of the Government Code.

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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 531356

Enc. Submitted documents

c: Requestor
(w/o enclosures)