



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2014

Ms. Lauren F. Crawford
First Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2014-13366

Dear Ms Crawford:

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# 531292.

The City of Bryan (the "city") received a request for four categories of information relating to the request for proposals for a skatepark project. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of California Skateparks; Dreamland Skateparks, L.L.C.; Evergreen Skateparks, L.L.C.; Grindline Skateparks; SPA Skateparks; and Wally Hollyday Skatepark. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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 received comments from SPA Skateparks. We have considered the submitted arguments and reviewed the submitted information.

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 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

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 contract for this bid has not been awarded, and the release of the requested information before the selection of a vendor would disadvantage the city in fairly negotiating the terms in the final agreement. Based on your representations and our review, we conclude the city has demonstrated release of the submitted information could harm its interests with respect to this project. Thus, the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.¹ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

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

Ref: ID# 531292

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Seattle, Washington 98106
(w/o enclosures)

Mr. Joseph M. Ciaglia Jr.
California Skateparks
273 North Benson Avenue
Upland, California 91786
(w/o enclosures)

Mr. Billy & Ms. Catherine Coulon
Evergreen Skateparks, LLC
5237 SE 69th Avenue
Portland, Oregon 97206
(w/o enclosures)

Mr. Wally Hollyday
Wally Hollyday Skateparks
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(w/o enclosures)

SPA Skateparks
c/o Mr. Stuart Hiserodt
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Ms. Danyel S. & Mr. Mark A. Scot
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