



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2014

Mr. Jonathan Kaplan  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2014-13932

Dear Mr. Kaplan:

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# 532264 (COSA File No. W027973-051714).

The City of San Antonio (the "city") received a request for award details, submitted responses, and evaluation committee comments and notes pertaining to a specified request for competitive sealed proposals. You state the city does not possess documents responsive to the first and third categories of information.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of Intergraph Corporation ("Intergraph") and Broadband Technology Corporation ("Broadband"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their 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); 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 submitted arguments and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.104 of the Government Code exempts 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 exempt information pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us the submitted information pertains to a pending competitive bidding process. You state the submitted responses of the respondents have not yet been evaluated. Additionally, you assert release of the information at issue could provide a respondent an advantage in the contracting or best and final offer phases of the award of this contract. Based on your representations, we conclude the city may withhold the submitted 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 in progress would necessarily result in advantage to certain bidders at the 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/ori\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/ori_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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 532264

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Intergraph Corporation  
19 Interpro Road  
Huntsville, Alabama 35758  
(w/o enclosures)

Broadband Technology  
4414 82<sup>nd</sup> Street, Suite 212  
Lubbock, Texas 79424  
(w/o enclosures)