



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Mr. Ben Stool
Assistant Criminal District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2014-15434

Dear Mr. Stool:

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# 534939.

Dallas County (the "county") received a request (the "first request") for all information on presentation scoring and any communications between the county and bidders relating to RFP 2014-017-6399. The county received another request (the "second request") for information relating to RFP 2014-017-6399, including all proposal materials submitted to the county, all scoring sheets and materials related to review of the submitted proposals, any communications between the county and bidders, and all communications concerning the RFP that assisted the county in determining the award. The county received a third request (the "third request") for information relating to RFP 2014-017-6399, including proposal materials submitted by four specified bidders, all scoring sheets and materials related to review of the submitted proposals, all communications concerning the RFP that assisted the county in determining the award, and a complete copy of the county's contract with the winning bidder. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

Initially, we note some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-08621 (2014).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In that ruling, we determined the county may withhold the submitted information under section 552.104 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the county may continue to rely on Open Records Letter No. 2014-08621 as a previous determination, and withhold the requested information that is identical to the information that was at issue in Open Records Letter No. 2014-08621 in accordance with that ruling. *See* Open Records Decision No. 673 (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we address your arguments against disclosure.

Next, to the extent the submitted information was not previously ruled on, we must address the county's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

You state the county received the first request for information on May 23, 2014. Accordingly, the county's ten- and fifteen-business-day deadlines were June 9, 2014, and June 16, 2014, respectively. However, the county did not mail the information required by sections 552.301(b) and 552.301(e) until July 18, 2014. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the county failed to comply with section 552.301 of the Government Code with respect to the scoring sheets and materials related to the review of the submitted proposals and communications between the county and bidders relating to RFP 2014-017-6399, which are responsive to the first request.

Although the county asserts the information at issue is excepted under sections 552.104 and 552.111 of the Government Code, these exceptions are discretionary and serve only to protect a governmental body's interests, and may be waived. As such, these sections do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301 in

regards to the scoring sheets and materials related to review of the submitted proposals and communications between the county and bidders relating to RFP 2014-017-6399, the county has waived its claims under sections 552.104 and 552.111 for such information, and these records must be released.

We note in waiving sections 552.104 and 552.111 for the information responsive to the first request, the county also waived its claims for this same information with respect to the second and third requests for information. *See Gov't Code § 552.007* (prohibiting selective disclosure of information); *Open Records Decision No. 463 at 1-2 (1987)*. However, we note the county complied with its obligations under section 552.301 with respect to the remaining information submitted in response to the second and third requests. As such, we will address your arguments for the remaining information responsive to the second and third requests.

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 remaining information responsive to the second and third requests relates to the county's specified request for proposals. You state, and provide documentation showing, a contract for the request for proposals is currently being negotiated but an agreement has not yet been reached and a contract has not yet been signed. You further state that should the current negotiation not be successful, the county may enter into negotiations with another bidder. You assert release of remaining responsive information related to the request for proposals would provide an advantage to a competitor or bidder if released and could pose significant harm to the county in attempts to secure the most favorable offer and negotiate the contract. Accordingly, the county may withhold the remaining information responsive to the second and third requests under section 552.104 of the Government Code.²

Next, we note portions of the information responsive to the first request that we have ordered to be released appear to contain information protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977)*. A governmental body

²As our ruling for the remaining responsive information in the second and third requests is dispositive, we need not address your remaining argument against disclosure of the information at issue.

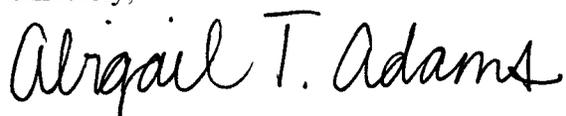
must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the responsive information is identical to information previously requested and ruled upon by this office, the county may rely on Open Records Letter No. 2014-08621 as a previous determination and withhold the responsive information in accordance with that ruling. The county must release the scoring sheets and materials related to review of the submitted proposals and communications between the county and bidders relating to RFP 2014-017-6399 in compliance with applicable copyright law. The county may withhold the remaining information responsive to the second and third requests 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ds

Ref: ID# 534939

Enc. Submitted documents

c: Requestor
(w/o enclosures)