



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2014

Ms. Cynthia Tynan  
Attorney and Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2014-15894

Dear Ms. Tynan:

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# 535582 (OGC# 156504).

The University of Texas Health Science Center at Houston (the "university") received a request for the last contract regarding mortuary services for the willed body program. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Carnes Funeral Home, Inc. ("Carnes"). Accordingly, you state you notified Carnes of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Carnes. 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 inform us the submitted information consists of the university's current contract for anatomical materials transport and cremation services. You further inform us the university's current contract has not yet been made public. You state the university is in the midst of an RFP process for a new anatomical materials transport and cremation services contract and bidding is ongoing. You further state no final contract relating to this current RFP process has been executed. Based on your representations and our review, we conclude you have demonstrated that release of the submitted information would cause specific harm to the university's interests in a particular competitive bidding situation. Thus, we find the university may withhold the submitted information under section 552.104 of the Government Code until such time as a new contract has been executed.<sup>1</sup>

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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

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<sup>1</sup>As our ruling is dispositive, we need not address Carnes' argument against disclosure.

Ref: ID# 535582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Tim Baker  
Executive Director  
Carnes Funeral Home  
3100 Gulf Freeway  
Texas City, Texas 77591  
(w/o enclosures)