



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2014

Ms. Myrna S. Reingold  
Legal Department  
County of Galveston  
722 Moody Street, Fifth Floor  
Galveston, Texas 77550

OR2014-21456

Dear Ms. Reingold:

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# 544688.

The Galveston County Purchasing Agent (the "county") received two requests for information related to Request for Qualifications ("RFQ") # B141024.<sup>1</sup> You state you do not possess any information responsive to categories (2) and (3) of the first request.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.136 of the Government Code. You also state these requests implicate the proprietary interests of certain third parties. Accordingly, you notified Linebarger Goggan Blair & Sampson, L.L.P.; Perdue Brandon Fielder Collins & Mott, L.L.P.; Pioneer Credit Recovery, Inc. ("Pioneer"); and The Cromeens Law Firm, P.L.L.C. ("Cromeens") of the requests and of their right to submit arguments to this office explaining why their

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<sup>1</sup>The first requestor seeks: (1) three specified proposals submitted in response to RFQ# B141024, (2) the names of all members of the review committee assigned to evaluate all responses to the RFQ, and (3) a copy of all completed evaluation forms produced by the review committee assigned to evaluate the RFQ. The second requestor seeks a specified proposal submitted in response to RFQ# B141024.

<sup>2</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).

information should not be released. *See* Gov't Code § 552.305; *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 arguments from Pioneer and Cromeens. 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) (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).

In this instance, you state the submitted information consists of third party proposals that pertain to a highly competitive procurement process. You inform us that the county's Commissioners Court has authorized the county to enter into negotiations with a selected vendor. Because a contract has not yet been executed, you state contract negotiations are ongoing and the release of the requested information would interfere with the county's bargaining position and undermine the county's ability to negotiate with another vendor "in the event the [c]ounty should determine to authorize negotiations with any of the other prospective vendors." Based on these representations and our review, we conclude the county has demonstrated that release of the submitted information would harm its interests in a competitive situation. Therefore, the county may withhold the submitted information pursuant to section 552.104 of the Government Code.<sup>3</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

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/cbz

Ref: ID# 544688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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