



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2014

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3<sup>rd</sup> Floor  
Richmond, Texas 77469

OR2014-21650

Dear Mr. Grove:

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# 544932.

Fort Bend County (the "county") received a request for the bid numbers for the information submitted in response to a specified bid. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified A & F Elevator Company, Southwest Elevator Company D/B/A Oracle Elevator, Schindler Elevator Corporation, and ThyssenKrupp Elevator Americas of the request for information and their rights 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 considered the exceptions you claim 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 county rejected all bids for the bid specified in the request in order to re-advertise for bids under a different bid number. You state all bidders were notified they could rebid when the new Request for Qualifications was issued. You have provided documentation showing the new bid was ongoing on the date you received the request. You state release of the submitted information would harm the county's interests by informing the vendors of pricing options that would undermine the county's negotiating position. Based on these representations and our review, we conclude the county has demonstrated release of the submitted information could harm its interests with respect to this project. Thus, the county may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.<sup>1</sup> *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](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,



Daniel Olds  
Assistant Attorney General  
Open Records Division

DO/akg

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

Ref: ID# 544932

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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