



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2014

Ms. Maureen Franz
Deputy Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2014-21810

Dear Ms. Franz:

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# 545407.

The Texas Health and Human Services Commission (the "commission") received a request for all records sent to or from a named individual "that mention or refer to in any way the Health and Human Services Commission Enterprise Data Warehouse procurement 529-13-0018," along with any e-mails that "relate to the process that led to that procurement item."¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the commission received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

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. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You submit documentation demonstrating the procurement at issue was cancelled so the commission could make revisions to help lower the costs of the project. You inform us the procurement will be reissued and that releasing the details contained in the submitted information would jeopardize the commission's bargaining position when it enters into contract negotiations with the successful bidders. Based on your representations and our review, we find the commission has demonstrated release of the submitted information could harm the commission's interests in a particular competitive situation. Accordingly, the commission may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.³

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ms. Maureen Franz - Page 3

Ref: ID# 545407

Enc. Submitted documents

c: Requestor
(w/o enclosures)