



January 15, 2015

Ms. Heather Silver
Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-00858

Dear Ms. Silver:

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# 550163.

The City of Dallas (the "city") received a request for information pertaining to the Dallas Municipal Court Third-Party Collection contract. You state the city will provide the requestor with some of the requested information upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code.¹ You also state release of this information may implicate the proprietary interests of Gila, L.L.C. d/b/a Municipal Services Bureau ("Gila"). Accordingly, you have notified Gila of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

¹Although you also raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision No. 676 at 1-2 (2002).

We have considered the submitted arguments and reviewed the submitted representative sample of information.²

You inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-20014 (2014). In that ruling, we concluded the city may withhold the information at issue under section 552.104 of the Government Code. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2014-20014 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the city may continue to rely on Open Records Letter No. 2014-20014 as a previous determination and withhold the previously ruled upon information in accordance with that ruling.³ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the information at issue is not encompassed by the previous ruling, we will consider your arguments against its release.

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(a). The purpose of section 552.104 is to protect a governmental body’s interests 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). 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). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. *See, e.g.*, Open Records Decision Nos. 541, 514 (1988), 306 (1982), 184 (1978), 75 (1975).

You state Exhibits B, C, and D relate to proposals for the Dallas Municipal Court Third-Party Collection contract. You further state the proposals are still being evaluated by the city and the contract has not yet been awarded or executed. You claim release of the information at issue would undermine the contract negotiation process because until a final

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

³As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure of it.

written contract is signed, negotiations with the selected bidder may fail, causing the city to select an alternate provider or issue a new request for proposals. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Accordingly, the city may withhold Exhibits B, C, and D under section 552.104 of the Government Code. *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).⁴

In summary, the city may continue to rely on Open Records Letter No. 2014-20014 as a previous determination and withhold the identical information in accordance with that ruling. The city may withhold Exhibits B, C, and D 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 550163

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.