



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 21, 2015

Ms. Jessica Marsh  
General Counsel  
Office of Violent Sex Offender Management  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2015-09964

Dear Ms. Marsh:

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# 564403 (PIR #2015-0003).

The Office of Violent Sex Offender Management (the "office") received a request for information regarding the individuals who initiated a specified proposed facility and correspondence and phone call records between the office and specified entities regarding the facility.<sup>1</sup> You state you have released some information to the requestor. You also state you do not have information responsive to a portion of the request.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.

---

<sup>1</sup>You state the office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<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).

You also state you have notified the Cass County Community Supervision and Corrections Department (the "county") of the request and of its opportunity to submit comments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim 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).

You state the requested information relates to a proposed contract between the office and the county, which was under discussion pursuant to section 391.109(15) of title 1 of the Texas Administrative Code, for the county to provide housing and supervision services for the office's clients who have been civilly committed pursuant to chapter 841 of the Health and Safety Code. You explain the office has gone through the request for proposals process twice before for these services without success. You further explain no final contract was entered into with the county as a result of these discussions. You state the office will continue to solicit proposals for the services at issue on an ongoing basis. You contend release of the submitted information would undercut the office's negotiating position and disadvantage the office's ability to obtain a contract with respect to these services in the future. Based on your representations and our review, we agree the office may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is underway would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the 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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 564403

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Catherine Betts  
Director  
Cass County CSCD  
P.O. Box 270  
Linden, Texas 75563  
(w/o enclosures)