



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2015

Mr. Charles R. Anderson
City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2015-12128

Dear Mr. Anderson:

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# 570781.

The City of Irving (the "city") received a request for copies of the final bids submitted in response to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. You also state release of this information may implicate the proprietary interests of Garfield Public/Private L.L.C. ("Garfield") and Swerdling & Associates. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right 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 received comments from Garfield. We have considered the submitted arguments 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

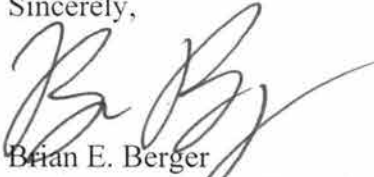
government). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the city has awarded the contract to Garfield, but the city and Garfield have not executed a final agreement. You argue the release of the submitted information before the execution of the final agreement would “place the [c]ity at a competitive disadvantage in its negotiations and harm the [c]ity’s ability to negotiate a final agreement.” You further state “the release of [the submitted information] while negotiation of the proposed contract is in progress could . . . be detrimental to the public interest.” Based on these representations and our review, we conclude the city has demonstrated release of the submitted information could harm its interests with respect to this project. Thus, the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.¹ *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, 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

¹As our ruling is dispositive, we do not address the remaining arguments to withhold this information.

Ref: ID# 570781

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Raymond Garfield
Garfield Public/Private LLC
14785 Preston Road, Suite 480
Dallas, Texas 75254
(w/o enclosures)

Mr. Robert Swerdling
Swerdling & Associates
4343 East Camelback Road, Suite 350
Phoenix, Arizona 85018
(w/o enclosures)