



December 19, 2000

Ms. Michelle R. Herrmann  
Feldman & Rogers, L.L.P.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

OR2000-4755

Dear Ms. Herrmann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142408.

The Pasadena Independent School District (the "district"), which you represent, received a written request for the following information:

- Results of the wage survey recently conducted by the [district];
- All documents reflecting the contractors participating in the recent wage survey;
- All data submitted by the responding contractors; and
- All documents explaining the guidelines and standards by which the wage survey was conducted.

You state that the district has released to the requestor the results of the wage survey, a spreadsheet showing the data used to calculate the survey results (without any identification of the contractors), a copy of the list of contractors who were invited to participate in the survey, and a narrative explaining the methodology used to conduct the survey and calculate the results. You contend, however, that individual survey forms submitted by the participants and information created during a telephone survey, which reveal the names of

the contractors and the hourly wages they pay their laborers, are excepted from public disclosure pursuant to sections 552.101, 552.104, and 552.110 of the Government Code.

We initially note that none of the information at issue is confidential under the Public Information Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Public Information Act. Attorney General Opinion JM-672 (1987). Consequently, unless the requested information falls within one of the act's exceptions to disclosure, it must be released, notwithstanding any agreement between the district and the interested third parties specifying otherwise.

We first address your arguments under section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by *judicial decision*." (Emphasis added.) Citing *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) as authority, you contend that the information at issue is confidential because the release of the information would adversely affect the district's ability to obtain similar information in the future. However, the Third Court of Appeals has held that *National Parks* was not a judicial decision within the meaning of the former section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed). Consequently, in accordance with the *Birnbaum* decision, this office no longer uses the *National Parks* standard for excepting information from required public disclosure. Accordingly, none of the information at issue may be withheld pursuant to *National Parks*.

We next address your arguments under section 552.104 of the Government Code. Section 552.104 protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information and other related internal documents while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977).

In this instance, however, the information at issue has not been submitted to the district in connection with a request for proposals. Although you state that the district has initiated a bond program for the construction and renovation of several new and existing schools, the district has not yet issued a Request For Proposals for that program. The mere fact that some of the respondents to the wage survey may also submit bids to the district sometime in the future does not constitute grounds for withholding the information at issue at this time under section 552.104. Section 552.104 protects information from public disclosure only if the governmental body demonstrates potential harm to its interests in a particular competitive

situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* Open Records Decision Nos. 593 at 2 (1991), 541 at 4 (1990), 463 (1987). Accordingly, the district may not withhold any of the information at issue pursuant to section 552.104.

Although you also contend that the information at issue is excepted from public disclosure pursuant to section 552.110 of the Government Code, you have requested a decision from this office regarding that exception pursuant to section 552.305 of the Government Code, which authorizes a governmental body to rely on the arguments of third parties with a privacy or property interest in the information to make arguments for non-disclosure. In accordance with the requirements of section 552.305(d), you have notified the affected third parties whose information has been requested. Of the fifty-four businesses that provided wage information to the district in connection with its wage survey, only eleven of those businesses responded to your section 552.305 notice. Because this office has no grounds on which to conclude that the information pertaining to the remaining forty-three businesses is excepted from public disclosure, we conclude that the requested information relating to those businesses must be released to the requestor in its entirety.

However, this office received arguments for non-disclosure from the following businesses: Southern Tile & Terrazzo Company, Inc. ("Southern Tile"), Pieper Consolidated Services and Pieper Houston Electric, Inc. ("Pieper"), Gage Roofing & Constructors, Inc. ("Gage"), Marker Paving, Inc. ("Marker"), Allied Fire Protection, Inc. ("Allied"), KenMor Electric Company, LP ("KenMor"), Slack & Company Contracting, Inc. ("Slack"), Gulf Star Roofing and Sheetmetal ("Gulf Star"), King & Arthur Mechanical ("King & Arthur"), J.M. Reed Plumbing Company ("Reed"), and Tellepsen Builders, L.P. ("Tellepsen"). Each of these companies contend that their respective wage information is excepted from public disclosure pursuant to, among other exceptions, section 552.110(b) of the Government Code.

Section 552.110(b) excepts from public disclosure "commercial or financial information" for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999).

After reviewing the section 552.110 arguments and the records at issue, we conclude that the following businesses have demonstrated that the release of their respective wage information would result in substantial competitive harm and therefore must be withheld from the public: Pieper, Gage, Marker, Allied, Slack, Gulf Star, King & Arthur, Reed, and Tellepsen. However, Southern Tile and KenMor have not provided this office with specific evidence that disclosure would cause substantial competitive harm as required under section 552.110(b). Consequently, the district must release to the requestor these two

companies' wage information as well as the wage information of those forty-three businesses that did not respond to your section 552.305 notice.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/seg

Ref: ID# 142408

Encl. Marked documents

cc: Mr. Jim Hart  
Williams Bailey  
8441 Gulf Freeway, Suite 606  
Houston, Texas 77017  
(w/o enclosures)

Mr. Les Craft  
Admiral Glass & Mirror  
6655 Polk Street  
Houston, Texas 77011-4509  
(w/o enclosures)

Mr. Michael Moore  
Acoustical Concepts, Inc.  
1900 Cross Point, Suite C  
Houston, Texas 77054  
(w/o enclosures)

Mr. Donald Walton  
All Rite Sheet Metal, Inc.  
5718 Broom Street  
Houston, Texas 77091-4908  
(w/o enclosures)

Ms. Jodie McAdams  
Allied Fire Protection, Inc.  
P.O. Box 2842  
Pearland, Texas 77588  
(w/o enclosures)

Mr. Chris Mailing  
Architectural Floors  
5120 Woodway, Suite 211  
Houston, Texas 77056  
(w/o enclosures)

Mr. Eric van Uchelen  
Ashford Glass & Mirror, Inc.  
5626 Weeping Willow Road  
Houston, Texas 77092-3351  
(w/o enclosures)

Mr. Craig Bundren  
Bundren L.D. Painting, Inc.  
1506 Upland Drive  
Houston, Texas 77043-4703  
(w/o enclosures)

Mr. David A. McAllen  
Campbell's Maintenance, Inc.  
903 Port Houston Street  
Houston, Texas 77029-2401  
(w/o enclosures)

Mr. Robert Bloomer  
The Ceiling Co.  
1943 Wycliffe Drive  
Houston, Texas 77043-2705  
(w/o enclosures)

Mr. Art Economos  
Commercial Flooring, Inc.  
4905 Maxie Street  
Houston, Texas 77007-3337  
(w/o enclosures)

Mr. Lloyd Cryer  
Cryer Palstering Co., Inc.  
10110 Papalote Street  
Houston, Texas 77041-5320  
(w/o enclosures)

Mr. Karl F. Doerner, Sr.  
Doerner Plastering Co., Inc.  
3617 West Alabama Street  
Houston, Texas 77027-5922  
(w/o enclosures)

Mr. Charlie Evans  
Elevator Transportation Services, Inc.  
P.O. Box 1543  
Pasadena, Texas 77501-1543  
(w/o enclosures)

Mr. John Hays  
Dover Elevator Co.  
7240 Brittmoore Road, #112  
Houston, Texas 77041-3225  
(w/o enclosures)

Mr. Johnny Hicks  
Finishes, Inc.  
P.O. Box 2277  
Sugarland, Texas 77478-2277  
(w/o enclosures)

Mr. Roger Gage  
Gage Roofing & Constructors  
P.O. Box 945  
South Houston, Texas 77587-0945  
(w/o enclosures)

Mr. LeRoy Stavinoha  
Glidden Roofing & Sheetmetal, Inc.  
5029 Milwee Street  
Houston, Texas 77092-6694  
(w/o enclosures)

Mr. David Salge  
Golden West Plastering Co.  
333 North Belt Drive East, Suite 380  
Houston, Texas 77060-2414  
(w/o enclosures)

Mr. Damon Gowan  
Gowan, Inc.  
5550 Airline Drive  
Houston, Texas 77076-4998  
(w/o enclosures)

Mr. W. A. Gregory  
Gregory-Edwards, Inc.  
P.O. Box 130525  
Houston, Texas 77219-0525  
(w/o enclosures)

Mr. David Parmer  
Gulf Coast Erectors, Inc.  
5314 Spencer Highway  
Pasadena, Texas 77505-1514  
(w/o enclosures)

Mr. William E. Arendt  
Gulf Star Roofing & Sheetmetal  
1613 Elm View  
Houston, Texas 77080  
(w/o enclosures)

Mr. Kenneth J. Gurry  
The Gurry Ken Corp.  
P.O. Box 57518  
Webster, Texas 77598-7518  
(w/o enclosures)

Mr. Charles R. Head, Jr.  
Head Paint & Wallcovering, Inc.  
9103 Emmott Road, Box 3  
Houston, Texas 77040-3528  
(w/o enclosures)

Mr. Robert J. Herring  
The Herring Company, Inc.  
P.O. Box 1835  
Pasadena, Texas 77501-1835  
(w/o enclosures)

Mr. Charles Reich  
Insulpro All Temp. Insulation Contractors  
6114 Schuler Street  
Houston, Texas 77007-3036  
(w/o enclosures)

Mr. Mike Jarrar  
Jarrar & Company  
7118 Killough Street  
Houston, Texas 77086-3620  
(w/o enclosures)

Mr. Joe Bitner  
Keith Plumbing & Heating Co.  
5955 Griggs Road  
Houston, Texas 77023-6523  
(w/o enclosures)

Mr. David D. Van Vleet  
KenMor Electric Co., L.P.  
10738 Baltimore Avenue  
Beltsville, Maryland 20705  
(w/o enclosures)

Mr. Donald Stewart  
Keystone Concrete Placement  
16565 Village Drive  
Houston, Texas 77040  
(w/o enclosures)

Mr. Stephen Arthur  
King & Arthur Mechanical  
5940 Bingle Road  
Houston, Texas 77092-1302  
(w/o enclosures)

Mr. Marvin Boeker  
Marker Paving, Inc.  
9827 Windmill Park Lane  
Houston, Texas 77064-3301  
(w/o enclosures)

Mr. Jack Marshall  
Marshall Construction Co., Inc.  
P.O. Box 7538  
Houston, Texas 77270-7538  
(w/o enclosures)

Mr. Harry Keller  
McDonald C.F. Electric, Inc.  
5044 Timber Creek Drive  
Houston, Texas 77017-5954  
(w/o enclosures)

Mr. John K. McNabb  
McNabb Plumbing & Heating  
13510 Orleans Street  
Houston, Texas 77015-3808  
(w/o enclosures)

Mr. George Tillota  
Meyerland Glass & Mirror Co.  
12922 Murphy Road  
Stafford, Texas 77477-3904  
(w/o enclosures)

Mr. Ronnie Gonzalez  
National Terrazzo Tile & Marble, Inc.  
5728 Hood Street  
Houston, Texas 77023-5998  
(w/o enclosures)

Mr. G.W. "Bud" Walters  
Pieper Consolidated Services  
1702 Oak Tree Drive  
Houston, Texas 77080-7240  
(w/o enclosures)

Mr. Tom A. Lancaster  
Precision Insulation Service Co., Inc.  
7792 Braniff Street  
Houston, Texas 77061-5196  
(w/o enclosures)

Mr. Kem Casey  
Quality Service Floor Covering  
9000 Pinehill Lane  
Houston, Texas 77041  
(w/o enclosures)

Mr. Roland Cartier  
R.G.C. Masonry Co.  
10950 Mahaffey Road  
Tomball, Texas 77375-6904  
(w/o enclosures)

Mr. J.M. Reed  
J.M. Reed Plumbing Company  
P.O. Box 890687  
Houston, Texas 77289-0687  
(w/o enclosures)

Mr. Gary Rosenberger  
The Rosenberger Co.  
6665 Rupley Circle  
Houston, Texas 77087-3443  
(w/o enclosures)

Mr. John Ryder  
The Ryder Co., Inc.  
5810 North Houston Rosslyn Road  
Houston, Texas 77091-3402  
(w/o enclosures)

Mr. Vince Nweke  
Saabs Construction Company  
11246 South Post Oak, Suite 108  
Houston, Texas 77035  
(w/o enclosures)

Mr. David Felgere  
Slack & Co. Contracting, Inc.  
10622 South Main Street  
Houston, Texas 77025  
(w/o enclosures)

Mr. Michael Maraldo  
Southern Tile & Terrazzo Co., Inc.  
6829 Lindbergh Street  
Houston, Texas 77087-5118  
(w/o enclosures)

Mr. Carlos M. Chavez  
StoneCrete, Inc.  
1333 West 25<sup>th</sup> Street  
Houston, Texas 77008-1617  
(w/o enclosures)

Mr. Rod Bowers  
Tellepsen Builders, L.P.  
777 Benmar Drive, Suite 400  
Houston, Texas 77060-3607  
(w/o enclosures)

Mr. David R. Brecht  
Top Concepts, Inc.  
13436 McGrath Road  
Houston, Texas 77047-4502  
(w/o enclosures)

Mr. James Stephens  
Tribble & Stephens Co.  
8580 Katy Freeway, Suite 320  
Houston, Texas 77024-1800  
(w/o enclosures)

Mr. John Kauffman  
Western States Fire Protection Co.  
11923 FM 529 Road  
Houston, Texas 77041-3011  
(w/o enclosures)

Mr. Gary D. Williams  
Williams Industries, Inc.  
11000 Brittmoore Park Drive  
Houston, Texas 77041-6920  
(w/o enclosures)

Mr. J. Todd Spruiell  
Williams Insulation Contractor, Inc.  
RR 2, Box 276  
Dickinson, Texas 77539-9282  
(w/o enclosures)