OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 11, 2001

Mr. Stephen C. Jacobs
Locke, Liddell & Sapp, L.L.P.
3400 Chase Tower
600 Travis Street
Houston, Texas 77002-3095

OR2001-1936

Dear Mr. Jacobs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147092.

The Houston Area Water Corporation (the "corporation"), which you represent, received a request for the matrix prepared by corporation staff to evaluate the responses to requests for proposals for a contract for the design, construction, and operation of a water purification plant and related transmission facilities, as well as the proponents' respective pricing proposals. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." 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 argue that

> [t]he disclosure of responses at this time would be detrimental to the Corporation's interests in that information of competitors would be shared

> and doubtless would have a deleterious affect [sic] on the ability of the Corporation to successfully negotiate a contract with the selected proponent . . . . If the Matrix is disclosed, the Corporation's evaluation of each proponent's technical response (which includes its design and operational systems), plans and pricing structure would be revealed. The fact that [the] Matrix summarizes such information does little to mitigate the fact that each proponent will gain knowledge of their competitors [sic] plans and their pricing structure. This disclosure would seriously hamper the Corporation's negotiating position in the final negotiations with the selected proponent.

On the basis of your arguments and our review of the information at issue, we agree that release of the requested information at this time would give an advantage to a competitor or bidder to the detriment of the corporation. Therefore, we conclude that the corporation may withhold the requested information under section 552.104.

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 Hadassah Schloss at 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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147092

Encl. Submitted documents

cc: Ms. Mary Flood
Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)