



September 10, 2001

Mr. Robert Schulman
Schwartz & Eichelbaum, P.C.
517 Soledad Street
San Antonio, Texas 78205

OR2001-4022

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151722.

The Eanes Independent School District (the "district"), which you represent, received a request for a copy of the final rankings pertaining to a particular bid proposal selection process. You claim that the submitted information is excepted from disclosure pursuant to section 552.104 of the Government Code. We have considered the exception you claim and have 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." The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations prior to the awarding of a contract. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987). In these situations, section 552.104 protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals and related information prior to the award of a contract. In Open Records Decision No. 170 (1977), this office stated:

[s]o long as negotiations are in progress regarding interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to its proposed contract, we believe that the bidding should be deemed competitive. Release of the bids while the bidding is still competitive 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 being let.

Open Records Decision No. 170 at 2 (1977). You state that the district's school board has not yet taken action on the bid proposals, that negotiations are just beginning, and that no contract has been awarded. Furthermore, you explain that section 44.039 of the Education Code authorizes the district to negotiate with offerors prior to the awarding of a contract and that release of the final ranking sheets would impair negotiations by providing the prospective contractor with information regarding the district's negotiating position as to that contractor. Finally, you state that in the event that the district should decide to reject all submitted bids and seek more favorable offers, the competitive nature of that re-bidding process could be damaged by release of the initial set of ranking sheets. Based on your representations and our review of the submitted final ranking sheets, we conclude that the bidding process is still competitive and that, therefore, you may withhold the submitted information from disclosure pursuant to section 552.104. However, we note that once a contract has been executed in this matter and the competitive bidding process is completed, you may not continue to withhold these sheets from disclosure under section 552.104 of the Government Code. See Open Records Decision No. 541 (1990).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 151722

Enc. Submitted documents

cc: Mr. Mike Weaver
Krueger Construction Company
P.O. Box 3613
Victoria, Texas 77903
(w/o enclosures)