



May 23, 2002

Ms. Pamela Meyer  
Assistant District Attorney  
Dallas County  
411 Elm Street, Suite 500  
Dallas, Texas 75202-3384

OR2002-2786

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163345.

The Dallas County Purchasing Department (the “county”) received two requests for information relating to presentations to the Dallas County Commissioners Court by Clearview Management Consultants, LLC. The county claims that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Under section 552.305 of the Government Code, the county also notified six private entities whose interests may be affected by these requests for information.<sup>1</sup> This office received correspondence from three of those entities: Clearview Management Consultants, LLC; Science Applications International Corporation; and Xerox Connect, Inc. The county also submitted the requested information to this office. We have considered the county’s arguments and those of the three private entities and have 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.” 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). 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. *See* Open Records Decision

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<sup>1</sup>*See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov’t Code ch. 552 in certain circumstances).

No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

The county informs us that the requested information relates to a solicitation of competitive bids for a contract to provide information technology. The county states that the selection and approval of the successful bidder, contract negotiation, and execution of the contract remain pending. The county represents to this office that the submitted briefing materials were distributed solely to the county commissioners and members of the county evaluation committee for this request for proposal. The county asserts that the release of this information would compromise its negotiation position and interfere with its ability to negotiate the best price. Based on these representations, we conclude that the county has demonstrated that the requested information is excepted from disclosure under section 552.104 of the Government Code. We note, however, that once the competitive bidding process is completed and a contract has been awarded, the requested information may no longer be withheld, unless it is excepted from disclosure under some other provision of chapter 552 of the Government Code. *See* Open Records Decision No. 541 at 5 (1990). As section 552.104 is dispositive at this time, we need not address sections 552.101 or 552.110.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 163345

Enc: Submitted documents

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