



July 24, 2002

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

OR2002-4062

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166100.

The Dallas County Purchasing Department (the "county") received a series of requests for information relating to the IT Outsourcing RFP #2002-011-1007. 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 notified private entities whose proprietary interests may be affected by these requests for information.<sup>1</sup> This office received correspondence from ACS Enterprise Solutions, Inc.; Clearview Management Consultants, LLC; SchlumbergerSema Inc.; and Science Applications International Corporation. We have considered the claims of the county and those of the private parties and have reviewed the representative samples of responsive information that the county submitted.<sup>2</sup>

---

<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).

<sup>2</sup>This letter ruling assumes that the submitted representative sample information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the county to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We note that one of these requests for information concludes with a question. Chapter 552 of the Government Code does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body that receives a request for information must make a good-faith effort to relate the request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume that the county has made the required good-faith effort to identify responsive information. The county indicates that some of the requested information did not exist when it received the request for that information. Chapter 552 does not require the county to release information that did not exist when it received the request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

The county also indicates that it previously requested an attorney general decision with regard to some of the requested information. This office addressed information relating to RFP #2002-011-1007 in Open Records Letter No. 2002-2786 (2002). In that decision, we concluded that briefing materials relating to presentations to the Dallas County Commissioners Court by Clearview Management Consultants, LLC, are excepted from disclosure under section 552.104 of the Government Code. You have not informed this office of any material change in the facts and circumstances on which Open Records Letter No. 2002-2786 (2002) is based. Therefore, the county may continue to rely on Open Records Letter No. 2002-2786 (2002) with regard to the information that is the subject of that decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Next, we address the county's claim under section 552.104 of the Government Code with regard to the rest of the requested information. Section 552.104 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 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 explains that it is in the process of selecting an information technology outsourcing provider through RFP #2002-011-1007. The county informs us that although a provider has been selected by the commissioners court, the final terms and conditions of the contract are still being negotiated. The county states that until a final contract is executed, negotiation with any of the other competitors is a possibility. The county contends that the release of the remaining information at this stage of the transaction could damage the county's negotiating position and limit its ability to negotiate the best price. Based on these representations and our review of the information in question, we conclude that the county has demonstrated that this information is excepted from disclosure at this time under section 552.104 of the Government Code. We note, however, that once a contract has been executed and is in effect, the county may no longer withhold the remaining information, 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.

In summary, the county may continue to rely on Open Records Letter No. 2002-2786 (2002) with regard to the information that is the subject of that decision. The county may withhold the rest of the requested information at this time under section 552.104 of the Government Code.

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

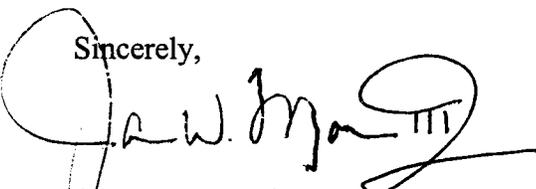
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



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

JWM/sdk

Ref: ID# 166100

Enc: Submitted documents

c: Mr. Jeff Friedman  
EDS - Business Development  
MS H3-5D-57  
5400 Legacy Drive  
Plano, Texas 75024  
(w/o enclosures)

Mr. John Nero  
Senior Account Executive  
ACS Enterprise Solutions, Inc.  
500 Elm Street, Suite 504  
Dallas, Texas 75202  
(w/o enclosures)

Mr. Mark A. Rowland  
Senior Counsel  
Science Applications International Corp.  
10260 Campus Point Drive  
San Diego, California 92121-1578  
(w/o enclosures)

Ms. Monica G. Bradshaw  
Law Office of Monica G. Bradshaw  
3700 Forum Drive  
Suite 104, Box 136  
Flower Mound, Texas 75028  
(w/o enclosures)

Ms. Kathleen M. Morrisroe  
Vice President and Corporate Counsel  
ACS Enterprise Solutions, Inc.  
2828 North Haskell  
Dallas, Texas 75204  
(w/o enclosures)

Ms. Laura A. Westby  
Counsel  
SchlumbergerSema Inc.  
30000 Mill Creek Avenue, Suite 100  
Alpharetta, Georgia 30022  
(w/o enclosures)