



August 23, 2002

Ms. Carolyn Hanahan
Feldman & Rogers
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2002-4707

Dear Ms. Hanahan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167564.

The Pasadena Independent School District (the "district"), which you represent, received a request for any and all materials provided to the district board of trustees the two weeks prior to, and during, the May 28, 2002 board meeting. You state that the district has provided the requestor with most of the requested information. You claim that one document is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted document.

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 a governmental body's interests during a competitive bidding situation. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. *See* Open Records Decision Nos. 541 (1990), 592 (1991). In this case, you state that the document at issue relates to negotiations over a real property transaction involving the district. Upon review of your arguments and the submitted document, however, we find you have not demonstrated that a particular competitive situation exists with respect to this transaction. Moreover, although you make reference to other property the district is considering, we find you have not demonstrated that the district is involved in a particular competitive situation with respect to any other property. Therefore, we determine that the district may not withhold the document at issue under section 552.104 of the Government Code. As you have raised no other exceptions to disclosure, we find the district must release the document to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 167564

Enc: Submitted documents

c: Ms. Doris Barnes
4406 Sao Paulo
Pasadena, Texas 77504
(w/o enclosures)