



September 10, 2002

Ms. Martha Sepeda
City Attorney
City of Del Rio
109 West Broadway
Del Rio, Texas 78840-5527

OR2002-5053

Dear Ms. Sepeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168378.

The City of Del Rio (the "city") received a request for a feasibility study prepared by the Army Corps of Engineers. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

The submitted information consists of a completed report. Therefore, as prescribed by section 552.022, the city must release the report unless it is confidential under other law. Section 552.105 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* Open Records

Decision Nos. 564 (1990) (governmental body may waive statutory predecessor to section 552.105), 552 (1989) (discretionary exceptions in general). Therefore, city may not withhold the report under section 552.105. You also raise section 552.104 of the Government Code. Section 552.104 is also a discretionary exception that may be waived by a governmental body. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104). Nevertheless, the requirement that information subject to section 552.022(a) is public unless expressly confidential under other law does not apply to information covered by section 552.104. Gov't Code § 552.104(b) (providing that governmental body may raise Gov't Code § 552.104 for information made expressly public by Gov't Code § 552.022). We will therefore address your claim under section 552.104 of the Government Code.

You have identified the parts of the report that you assert are excepted from disclosure under section 552.104 of the Government Code. 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 during a competitive bidding situation. 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 from the release of information will not suffice. *See* Open Records Decision Nos. 541 (1990), 592 (1991). In this case, you inform us that the report at issue pertains to properties that the city anticipates buying pursuant to a plan to mitigate future flood damage. You state that the city intends to appraise properties identified in the report, and may negotiate with the property owners on the respective purchase prices. You argue that negotiations could be affected by disclosure of the estimated values, or by early bids from or sales to people who have knowledge about the study and the estimates. However, you do not inform us whether the city is currently engaged in negotiations with respect to any of the properties identified in the report. Furthermore, you do not indicate what specific harm the city will suffer in a particular competitive situation as a result of release of this information. Accordingly, we are unable to determine from the information you provided that disclosure of the report at issue will cause the city actual harm in a particular competitive situation. Therefore, we determine that the city may not withhold the report under section 552.104 of the Government Code. We conclude that the city must release the report 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# 168378

Enc: Submitted documents

c: Mr. Don Lindley
2450 Avenue F
Del Rio, Texas 78840
(w/o enclosures)