



November 5, 2002

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2002-6284

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171810.

The City of Lubbock (the "city") received a request for copies of information pertaining to bid #154-02/RS, a request for proposals to provide fiber optic cable and related materials to Lubbock Power & Light ("LPL"), as well as a separate request for information pertaining to bid #164-02/RS, a request for proposals to provide street light pole painting - annual pricing to LPL. You claim that the requested information is excepted from disclosure under section 552.104 and 552.133 of the Government Code.¹ We have considered your arguments and have reviewed the submitted information.

We first address your argument under section 552.104 of the Government Code. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body, usually in competitive bidding situations.

¹We note in your initial correspondence to this office, you also raised sections 552.101 and 552.110 of the Government Code.. You did not, however, make arguments in support of these exceptions, nor do you appear to have notified any third parties whose proprietary interests might be at issue in these requests. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in Public Information Act in certain circumstances).

See Open Records Decision No. 592 (1991). Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. See, e.g., Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. See Open Records Decision 541 (1990).

In this case, you inform us that the contracts at issue have not been awarded and that the city is still in the negotiation period in the RFP process.² We therefore conclude that the submitted information is excepted from disclosure in its entirety at this time under section 552.104. In light of this conclusion, we need not address your other raised exception.

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

²We note in this regard your statement that "[t]he requestor asked for copies of responses to *one of the City's RFPs*. A copy of the requested materials is attached as 'Exhibit B.'" (Italics added). As you have submitted information responsive to both of the requests in Exhibit B, we interpret your argument under section 552.104 as being applicable to the information responsive to both requests.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 171810

Enc. Submitted documents

c: Mr. Nick Frangos
P.O. Box 588
Campbell, Ohio 44405
(w/o enclosures)

c: E-Commerce Development Group
400 Poydras Street, Suite 1780
Texaco Center
New Orleans, Louisiana 70130-3245
(w/o enclosures)