



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2003-0562

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175605.

The City of Dallas (the "city") received a request for "copies of the proposals for the three finalist [sic] for the City of Dallas' 457 Deferred Compensation Plan," and for a copy of "the final contract between the City and Fidelity for 457 Services." You state that the city is providing the requestor with the requested contract except for portions consisting of proprietary information. You claim, however, that information responsive to the first part of the request and portions of the contract responsive to the second part of the request may contain proprietary information. You indicate, and provide documentation showing, that the city has notified Nationwide Retirement Solutions ("Nationwide"), Fidelity Investments ("Fidelity"), CitiStreet, and Aetna Investment Services, Inc. ("ING-Aetna") of the request for information in order to afford each entity an opportunity to supply objections to release of the submitted information. *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). We have considered your assertions.

We note that the current request seeks certain information that is identical to a portion of the information previously requested and ruled upon by this office in Open Records Letter Ruling No. 2003-0223 (2003). To the extent that the requested information is identical to the information at issue in Open Records Letter Ruling No. 2003-0223, we conclude you must rely on that ruling as a previous determination and withhold or release the information pertaining to these finalists and the copy of the contract in accordance that ruling *See* Open

Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not excepted from disclosure).

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 175605

Enc: Submitted documents

c: Ms. Theresa Cruz-Myers
Director Institutional Markets
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(w/o enclosures)