



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 10, 2003

Mr. J. Erik Nichols
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3200 Southwest Freeway, Suite 2300
Houston, Texas 77027-7528

OR2003-4777

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184059.

The Bryan Independent School District (the "district"), which you represent, received a request for "1) a paper copy of the Health Plan submission request letter sent to other health care providers in the Brazos Valley for 2003; [and] 2) a paper copy of the proposal awarded the contract for each of the last two years." The requestor subsequently clarified the second category of the request and asked for "[a] paper copy of submittals, including the services and associated costs provided to the employees of the [district], awarded the health facility contract from the previous two successful bids." You indicate that you interpret the second category of the request to seek the existing contract between the district and St. Joseph Regional Health Center ("St. Joseph") and claim that such information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. In addition, you have notified St. Joseph of the request and of its opportunity to submit comments to this office. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.

Initially, we note that you have not submitted for our review any information responsive to the first category of the request. We therefore assume you have released such information to the extent that it exists. If you have not released any such records, you must do so at this

time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next note that the submitted information constitutes “a contract relating to the receipt or expenditure of public or other funds by a governmental body” and is therefore generally “public information and not excepted from required disclosure . . . unless . . . expressly confidential under other law.” *See* Gov't Code § 552.022(a)(3). However, you claim that this information is excepted from disclosure under section 552.104, and we will therefore address your arguments. *See* Gov't Code § 552.104(b) (section 552.022 does not apply to information that is excepted from disclosure under section 552.104).

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). 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). Moreover, 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. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. ORD 541. However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

In this instance, you state that the district “is currently reviewing proposals requested from various organizations regarding health plans.” You inform us that the district has not yet awarded a contract concerning this request for proposals. You state that St. Joseph is again submitting a proposal and claim that “obtainment of St. Joseph's existing contract with [the district,] would be used . . . for bidding purposes, and if released, would give advantage to . . . a competitor or bidder.” Based on your arguments and our review of the submitted information, we conclude that the existing contract may be withheld pursuant to section 552.104 until such time as a new contract is in effect. Because our decision under section 552.104 is dispositive, we do not address your other arguments or the arguments submitted by St. Joseph.

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).

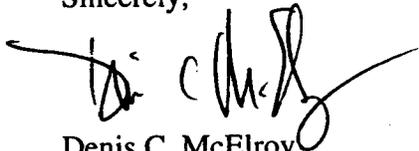
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 184059

Enc. Submitted documents

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