ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2003

Mr. Teris Solis
Assistant City Attorney
City of Arlington
Box 90231
Arlington, Texas 76004-3231

OR2003-6429

Dear Mr. Solis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187575.

The City of Arlington (the "city") received a request for certain information related to city vehicles purchased or leased since 1999. You advise that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

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. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). 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). We note that the requirement under section 552.022(a) that certain categories of information are public and not excepted from required disclosure unless expressly confidential under law does not apply to information excepted under this section. *See* Gov't Code § 552.104(b).

In this case, you inform us that the city has solicited bids from outside vendors to provide maintenance for the city's fleet of vehicles, and that the contract for these services has not been awarded. The information at issue consists of maintenance costs of the internal operations of the city's Fleet Services Department, which you state was not provided to bidders. You argue that the release of this information would harm the city's interests in obtaining the best value for maintenance services in connection with the pending bid process. Based on your representations and our review of the submitted information, we conclude that the information at issue is excepted from disclosure based on section 552.104 until such time as the contract is awarded. As section 552.104 is dispositive, we do not address your remaining claims.

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).

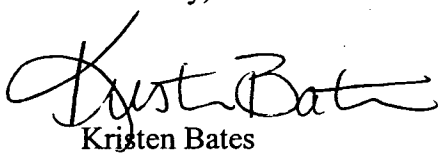
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 187575

Enc. Submitted documents

c: Mr. Lico Reyes
President
LULAC International Council #4779
Box 150001
Arlington, TX 76015
(w/o enclosures)