



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 23, 2003

Mr. Michael F. Miller
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2003-6665

Dear Mr. Miller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188125.

The City of Galveston (the "city") received a request for (1) the bid package for bid number 02-03-029, (2) the "exact copy" that the city used to determine who was awarded the bid on six listed properties, and (3) estimated costs utilized by the city in determining the most responsive bidder. You state that the city does not have any records pertaining to one of the listed properties.¹ You inform us that the city has released information responsive to items 1 and 2 of the request. You claim that the information responsive to item 3 of the request is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish

¹Chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

additional information. *Cf.* Open Records Decision No. 170 (1977). Generally, section 552.104 does not except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982); 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

However, in Open Records Decision No. 541 at 5 (1990), this office concluded that the statutory predecessor to section 552.104 may apply to bidding information pertaining to an awarded contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. In this regard, you inform us that the city "is involved in this type of project on a continuing basis, [and therefore] has a menu of items and their corresponding estimated costs, which is applied in every house to be bid out for a construction/repair project." Furthermore, you contend that the release of the requested cost estimate information would give advantage to bidders in connection with future bids for repair and construction projects because it would allow them to center bids "around the city's reasonable cost estimates rather than being based upon independent analysis by the bidders which may well result in less competition among bidders and higher bids." Given your representations, we conclude that you have met your burden of establishing the applicability of section 552.104 to the submitted cost estimate information. Accordingly, the city may withhold the submitted cost estimate information in this instance.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 188125

Enc. Submitted documents

c: Mr. Eric Kingston
K&M Construction
2804 Avenue H
Galveston, Texas 77550
(w/o enclosures)