



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 17, 2003

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

OR2003-8221

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# 191120.

The City of Lubbock (the "city") received two requests for specified bid tabulations. You characterize the requests as seeking the "bidder's list to one of the [c]ity's bids." You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.104, and 552.133 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that you did not submit to us any responsive bid tabulations pertaining to "ITB#138-03/dc." We, therefore, presume that the city has already provided these tabulations to the requestor who requested them to the extent that they exist. If not, then the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now address your claims regarding the submitted information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the competitive commercial interests of a governmental body, such as in competitive bidding situations, where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). A governmental body must, however, demonstrate some actual or specific harm to its competitive interests in that particular competitive

situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Further, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and has been executed. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that there was more than one response to the city's request for bids in this matter, that no contract has yet been awarded in regard to this bid request, and that the city is still in the negotiation period in this bid process. Based on your representations and our review of the submitted information, we find that the city has adequately demonstrated that the release of the information at this time would cause specific harm to the city interests in a particular competitive situation. Accordingly, we conclude that the city may withhold the entirety of the submitted information pursuant to section 552.104 of the Government Code.<sup>1</sup>

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).

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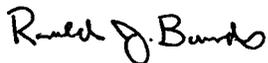
<sup>1</sup> Because we base our ruling on section 552.104 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 191120

Enc. Submitted documents

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