



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2004

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2003-8281A

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196077.

The Tarrant County Purchasing Department (the "county") received a request from AmCad and Hart InterCivic, Inc. ("Hart") for a copy of the proposals submitted in response to a particular request for proposals, each excluding the requestor's own proposal. Hart also requested the analysis and selection documents generated by the county. In response to these requests, this office issued Open Records Letter No. 2003-8281 (2003), in which we held that the county must withhold certain marked pages related to three third parties under section 552.110 of the Government Code.¹ Specifically with respect to the information related to Hart, we noted that although Hart made arguments for withholding financial statements and Appendices A, B, and C to its proposal, the information related to Hart submitted by the county did not include any of this information. We therefore limited our ruling to the information submitted by the county and did not rule on the financial statements or Appendices A, B, or C.

We have received correspondence from the county in which the county states it "inadvertently left out a portion of the material submitted by HART during the bidding process." The county further states that "[i]t is clear that HART believed this Office had submitted these documents to the Attorney General as is evidenced by their timely response,

¹The three third parties were: Fidlar Software Company, Government Records Service, Inc., and Hart.

dated September 26, 2003.” The county has submitted the documents that were inadvertently omitted from the prior submission to this office, and now seeks a ruling regarding this information. We have also received correspondence from Hart in which Hart confirms that its financial statements and Appendices A, B, and C were thought to have been submitted by the county, but that no opinion was given in connection with those documents. Hart has also submitted the information at issue. We have reviewed Hart’s prior arguments regarding its financial statements and Appendices A, B, and C, and the submitted information not previously ruled on in Open Records Letter No. 2003-8281 (2003).

Section 552.301(e) of the Government Code provides that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You acknowledge that the county did not submit all of the requested information as required by section 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, because third party interests are at stake in this instance, we will consider Hart’s arguments for the newly submitted information.

Hart claims that its financial statements and Appendices A, B, and C are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. *Cf. National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. *See* Open Records Decision No. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or

generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure).

Hart argues that release of its financial statements and Appendices A, B, and C would result in substantial competitive harm. Upon review of Hart's arguments and the submitted information, we conclude that Hart has established that substantial competitive injury would result from the release of this information. Therefore, the county must withhold Hart's financial statements and Appendices A, B, and C under section 552.110(b) of the Government Code.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 196077

Enc. Submitted documents

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