



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2004

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
PO Box 13247
Austin, Texas 78711

OR2004-0148

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197077.

The Health and Human Services Commission (the "commission") received a request for copies of complete proposals submitted by the University of Massachusetts (the "university") and Maximus, Inc. ("Maximus"), as well as scoring sheets and written comments relating to a particular RFP. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state that the request may implicate the proprietary interests of third parties, the university and Maximus. Therefore, you indicate that you have notified the university and Maximus of the request and their right to submit comments to this office under section 552.305 of the Government Code.¹ 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 the exceptions you claim and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental

¹As of the date of this letter, this office had not received any arguments for withholding the requested information from the university or Maximus.

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). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the commission is currently negotiating two contracts with the university and Maximus, respectively. Further, you contend that release of the submitted information at this time would "jeopardize the Commission's bargaining position if it were to enter into contract negotiations with other bidders." Based on your representations, we conclude that the submitted information is excepted from disclosure under section 552.104 of the Government Code and may be withheld from the requestor.²

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).

²Because we are able to resolve this matter under section 552.104, we need not consider whether section 552.110 protects the information at issue.

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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 197077

Enc. Submitted documents

c: Mr. Tony Brown
Public Consulting Group
148 State Street, 10th Floor
Boston, Massachusetts 02109
(w/o enclosures)

Ms. Mary Fontaine
University of Massachusetts Medical School
529 Main Street
Charleston, Massachusetts 02129
(w/o enclosures)

Mr. Wayne Specht
Maximus
2800 South IH-35
Austin, Texas 78701
(w/o enclosures)