



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2004

Ms. Veronica Ocañas
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2004-4172

Dear Ms. Ocañas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202085.

The City of Corpus Christi (the "city") received a request for "the pricing pages from each of the [third-party administrators'] Responses to Proposals" and "any spreadsheets that may have been used comparing the prices." You have submitted the information that the city deems to be responsive to this request. The city takes no position with regard to the public availability of this information. You believe, however, that the request for this information implicates the proprietary interests of third parties under section 552.110 of the Government Code. You have informed the interested third parties of this request for information and of their right to submit arguments to this office as to why the information should not be released.¹ We also received correspondence from CompManagement, Inc. We have reviewed the submitted information and have considered CompManagement's arguments.

We first note that an interested third party has ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from AS&G Claims Administration, Inc.; CCS Consulting, L.P.; FARA-F.A. Richard & Associates, Inc.; The JI Companies; Tristar Risk Management; or

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Ward North America, Inc. Thus, none of these entities has demonstrated that any of the submitted information is proprietary for purposes of section 552.110. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the city must release all of the submitted information that relates to AS&G Claims Administration, Inc.; CCS Consulting, L.P.; FARA – F.A. Richard & Associates, Inc.; The JI Companies; Tristar Risk Management; and Ward North America, Inc.

CompManagement claims that information contained in the "Pricing" section of the company's proposal is excepted from disclosure under section 552.104.² This section excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). Section 552.104 protects the interests of governmental bodies, not the proprietary interests of private parties such as CompManagement. *See* Open Records Decision No. 592 at 8 (1991) (discussing statutory predecessor). Furthermore, section 552.104 is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (addressing discretionary exceptions generally), 592 at 8 (1991) (statutory predecessor to Gov't Code § 552.104 could be waived). In this instance, the city has not claimed an exception to disclosure under section 552.104. Therefore, the city may not withhold any of the submitted information that relates to CompManagement under section 552.104. As CompManagement raises no other exception to the disclosure of the submitted information that relates to CompManagement, that information must also be released.

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.

²We note that CompManagement's arguments also encompass the "Sample Report" section of the company's proposal to the city. Under the Public Information Act (the "Act"), chapter 552 of the Government Code, the governmental body that requests the attorney general's decision must submit to this office "a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Gov't Code § 552.301(e)(1)(D); *see also* Open Records Decision No. 497 at 4 (1988) (attorney general must review requested information in order to determine whether it is subject to an exception to public disclosure). In this instance, the city has not submitted either the "Sample Report" section of CompManagement's proposal or any information that appears to be a representative sample of that part of the proposal. Accordingly, we do not address either the public availability of the "Sample Report" section of CompManagement's proposal or CompManagement's arguments with regard to that information.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/seg

Ref: ID# 202085

Enc: Submitted documents

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