



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2004

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2004-4760

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203141.

The University of Texas M.D. Anderson Cancer Center (the "center") received a request for information relating to the Premier Purchasing Group contract. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.137 of the Government Code. You also believe that this request for information implicates the proprietary interests of Premier, Inc., under section 552.110. You notified Premier of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We also received correspondence from attorneys for Premier. We have considered all of the submitted arguments and have reviewed the responsive information you submitted.²

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this

¹See 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).

²This letter ruling assumes that the submitted representative samples of responsive information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes you to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

section is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not ordinarily protect information that relates to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that under some circumstances section 552.104 may apply to information that pertains to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id* at 5.

You state that the submitted information relates to a contract between the center and Premier, a group purchasing organization. You inform us that Premier, on behalf of the center, negotiates prices with vendors of medical goods and obtains vendor pricing based on purchase volume. You state that the center's contract with Premier is the subject of ongoing negotiations. You also state that if the center and Premier are unable to come to an understanding, it would become necessary to open negotiations with another vendor. You assert that any such negotiations would be harmed by the release of the submitted information. You also argue that the release of the submitted information would compromise the center's ability to obtain competitive pricing from vendors of medical goods. Based on your representations, we conclude that the center may withhold the submitted information under section 552.104. As we are able to make this determination, we need not address your other arguments or those submitted by Premier.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 203141

Enc: Submitted documents

c: Mr. John Birmingham
WalkerCom
2900 Woodridge, Suite 100
Houston, Texas 77087
(w/o enclosures)

Mr. James K. Gardner
Neal, Gerber & Eisenberg
Two North La Salle Street
Chicago, Illinois 60602-3801
(w/o enclosures)