



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2004

Mr. C. Brian Cassidy
Locke Liddell & Sapp L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701-4042

OR2004-6945

Dear Mr. Cassidy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207160.

The Central Texas Regional Mobility Authority (the "CTRMA"), which you represent, received a request for (1) a Vollmer & Associates ("Vollmer") traffic study, (2) any correspondence between CTRMA and Vollmer, (3) any public information retained or collected by Vollmer, and (4) any contract between CTRMA and Vollmer. You assert you have released some of the requested information, but claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception 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 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).*

¹Although you also initially raise section 552.111 of the Government Code as an exception to disclosure, you did not submit to this office written comments stating the reasons why this section would allow the information to be withheld; therefore, we assume you no longer claim this exception. *See* Gov't Code §§ 552.301, 552.302.

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 "CTRMA is in the process of procuring a comprehensive development agreement ('CDA') for the development of the US 183-A project in Williamson County (the 'Project')." You assert that the CDA procurement process is in the second phase: requests for detailed proposals ("RFDP") have been issued, but the entities sent the RFDP have not yet responded and the contract for the project has not yet been awarded. You also state the following:

The information generated by CTRMA and its consultants is used by CTRMA for internal purposes, and as baseline data for evaluating the quality and feasibility of each short-listed team's RFDP response. Consequently, disclosure of this information might influence . . . each team's response to portions of the RFDP.

Based on your arguments and our review of the submitted information, we conclude that release of the submitted information would give advantage to a competitor or bidder; therefore, the information is excepted from release under section 552.104.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 207160

Enc. Submitted documents

c: Mr. Brad Rockwell
Save Our Springs Alliance
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(w/o enclosures)