ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2005-07446

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 230217.

The City of Houston (the "city") received a request for information spanning a specified time period "regarding turning health services at the city jails over to [the University of Texas Medical Branch ("UTMB")]." You claim that the submitted information is excepted from disclosure pursuant to sections 552.104, 552.107 and 552.111 of the Government Code. We have considered the exceptions claimed and reviewed the submitted representative sample of information.[1] We have also reviewed comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body, usually in competitive bidding

[1]We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded and executed. *See, e.g.*, Open Records Decision Nos. 541 (1990)).

We understand that the information submitted as Exhibits 2, 3, and 4 pertains to negotiations between the city and UTMB regarding the provision of health services to inmates in the city's jails. You state that, as of the date the city received this request for information, the contract regarding this matter has not been approved by the city council. Although you concede that portions of this information will be public once an agreement is approved by city council, you claim that the release of this information prior to such approval would compromise the city's negotiating position. Furthermore, you state that if the city "cannot negotiate a contract with the selected party, or if the [c]ity [c]ouncil does not approve the contract, the [c]ity may have to renegotiate the contract or solicit new proposals. Thus, release of [the] responsive information would undermine the [c]ity's ability to renegotiate or obtain favorable proposals." Based on your representations and our review of the information at issue, we conclude that the information submitted as Exhibits 2, 3 and 4 may be withheld under section 552.104.[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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

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[2] Because we reach this conclusion under section 552.104, we need not consider your remaining arguments against the disclosure of the information in Exhibits 2 and 3.

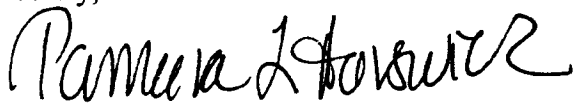
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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); *Tex. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 230217

Enc. Submitted documents

c: Mr. Greg Harman
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(w/o enclosures)