



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2005

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

OR2005-11116

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 238046.

The Lower Colorado River Authority (the "LCRA") received two requests for information pertaining to Request for Proposal numbers 5646, 5760, 5761, 5762, and 5763. You state that you will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.104, 552.111, and 552.133 of the Government Code.¹ Additionally, you state that the requested bid proposals may contain proprietary information. Accordingly, you inform us, and provide documentation showing, that you notified third parties Headwaters Resources, Boral Material Technologies, Inc., Bulk Materials International Co., Lindig Construction, Austin Crushed Stone, and Mineral Resource Technologies, Inc. of the requests and of their right to submit arguments to this office as to why their information should not be released. See Gov't Code § 552.305(d) (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 Gov't Code § 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 submitted arguments and reviewed the submitted information.

The LCRA argues that the requested information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the interests of a governmental body

¹ In subsequent correspondence with this office, LCRA withdrew its assertion of sections 552.103 and 552.107 of the Government Code.

by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. Open Records Decision No. 541 (1990). The governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. Open Records Decision No. 593 at 2. Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990). You inform us that the requested information pertains to competitive bidding situations in which contracts have not yet been approved or awarded. You also assert that release of the information would jeopardize the LCRA's negotiation position with the potential parties who are eventually awarded a contract pursuant to each proposal. After considering your representations and reviewing the submitted information, we find that the LCRA has demonstrated that the release of the requested information would harm its interests in a particular competitive situation. We therefore conclude the LCRA may withhold the requested information under section 552.104 of the Government Code until such time as a contract has been executed. As our ruling on this issue is dispositive, we need not address any of the remaining submitted arguments.

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 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); *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 Office of the Attorney General 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. 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 238046

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