ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2005

Mr. William R. Crow, Jr.
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2005-11665

Dear Mr. Crow:

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# 240919.

The San Antonio Water System (the "system") received a request for information pertaining to a Request for Proposals for a new software system. You state that some of the requested information has been made available to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state, and provide documentation showing, that you notified Hansen Information Technologies, Inc. ("Hansen"), Sapient Corporation, and Systems and Software, Inc. ("Systems & Software") of the system's receipt of the request for information and of the right of each interested third party to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Hansen asserts that its information is excetped under sections 552.101, 552.110, and 552.111 of the Government Code, and Systems & Software asserts that its information is excepted under sections 552.101, 552.104,

and 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.[1]

Section 552.104 of the Government Code 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). 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 inform us that the bidding process is still ongoing in the system's request for proposals for the implementation of a new software integration system. You also state that "no vendor has been selected, no contract has been awarded or negotiated, and there has been no Board approval[.]" 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 submitted information is excepted from release 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

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[1]You inform us that the requestor is a board member of the system, but that he " is bringing this request on his own and in his individual capacity."

[2]As we are able to resolve this under section 552.104, we do not address the other arguments for exception of the submitted information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 240919

Enc. Submitted documents

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