



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2006-01903

Dear Ms. Valkavich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 243139.

The City of San Antonio (the "city") received a request for "all records, for the period of 01/2005 - 12/02/2005, generated between the City of San Antonio and the Texas A&M University System, in connection with the negotiations for the proposed San Antonio campus (City South)." You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city sent the Texas A&M University System (the "system") a notice letter under section 552.305 of the Government Code informing the system of the city's receipt of the request and of the system's right to submit arguments to us as to why any portion of the submitted information should not be released. *See Gov't Code §552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and*

¹Although you also raise section 552.105 of the Government Code, you have not provided this office with any arguments in support of this exception, nor have you made any markings on the submitted documents to indicate that section 552.105 applies to any of the information at issue. Therefore, this exception has been waived by the city. Gov't Code § 552.301.

explain applicability of exception to disclosure under the Act in certain circumstances). In response to the city's notice letter, the system states that it does not believe that section 552.305 applies in a situation such as this one where both parties are governmental bodies subject to the Act. Further, the system received an identical request from the same requestor and has submitted its own arguments in support of withholding any responsive information that it holds. Accordingly, as no proprietary interests have been raised by the system, we will address only the city's arguments under sections 552.104 and 552.131.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception 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 protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978). Further, section 552.104 does not apply when a single individual or entity is seeking a contract as there are no "competitors" for that contract. *See* Open Records Decision No. 331 (1982).

After reviewing the city's arguments and the information at issue, we find that the city has not established that the situation at hand is a competitive situation as encompassed by section 552.104. Further, the city has not shown that there are any other "competitors" other than the system. Thus, we conclude that section 552.104 does not apply to the documents at hand.

We next address the city's arguments under section 552.131 of the Government Code. Section 552.131 excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). Section 552.131(a) is inapplicable to information about a financial or other incentive offered the business prospect after a governmental body reaches an agreement with the business prospect. Gov't Code § 552.131(b),(c).

After reviewing your arguments, we find that the city has not established that any of the submitted information consists of a business prospect's trade secret or commercial or financial information that would be excepted under section 552.131(a). Further, the system itself has informed the city that it make no claims of either protected trade secret or commercial or financial information for the information responsive to this request. Thus, section 552.131(a) is inapplicable to the information at issue. Additionally, the city has not

established, and we are unable to determine, what portions, if any, detail financial incentives being offered to the system by the city. Therefore, section 552.131(b) is also inapplicable to the information at issue. The submitted information must be released.

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).

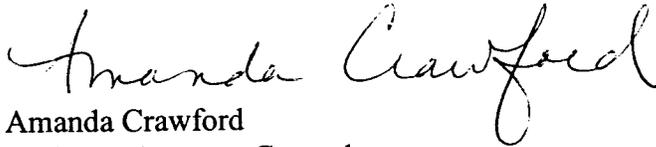
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/segh

Ref: ID# 243139

Enc. Submitted documents

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