



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2006

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
1900 Main, 3rd Floor
Houston, Texas 77002

OR2006-02664

Dear Ms. Alexander:

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# 244219.

The Metropolitan Transit Authority of Harris County ("METRO") received a request for "any and all documents and correspondence [between METRO] and Transwestern Development Company, Transwestern Commercial Services, and Transwestern Investment Company [(collectively "Transwestern")], regarding the Request for Qualifications and air rights lease for the public/private development project at METRO's Texas Medical Center station, including but not limited to Transwestern's response to the Request for Qualifications." You state that Transwestern's response to the Request for Qualifications has been made available to the requestor and that some of the requested correspondence will be released. However, you claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, in comments submitted to this office, Transwestern claims that some of the requested information is subject to its proprietary interests and excepted from disclosure under section 552.110 of the Government Code. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that some of the information at issue may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-11485 (2005). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you must continue to rely on Open Records Letter No. 2005-11485 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information was not the subject of the prior ruling, we will address the submitted arguments.

Section 552.104 of the Government Code 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 a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You assert that the submitted documents contain information about the proposed design and construction of facilities, costs and project management regarding the Texas Medical Center station that are unresolved. You state "[d]iscussions are ongoing between METRO and Transwestern Commercial Development and no final agreements have been executed regarding the development and construction of this major transit facility." You further state that if negotiations are not finalized, and a new solicitation is issued for the Texas Medical Center station, the release of the submitted information would compromise METRO's negotiations with a future proposer. Based upon your representations, we conclude that the submitted information may be withheld from the requestor under section 552.104.¹ *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

In summary, to the extent the submitted information was the subject of Open Records Letter No. 2005-11485, METRO must continue to rely on that prior ruling as a previous

¹As our ruling on this issue is dispositive, we need not address Transwestern's submitted arguments against disclosure.

determination. To the extent the submitted information was not the subject of the prior ruling, METRO may withhold the submitted information under section 552.104 of the Government Code.

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).

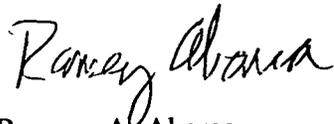
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 244219

Enc. Submitted documents

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