



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2006

Ms. Talibah Peugh  
Assistant General Counsel  
University of Houston System  
E. Cullen Building, Suite 311  
Houston, Texas 77204-2162

OR2006-05475

Dear Ms. Peugh:

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# 249976.

The University of Houston (the "university") received a request for information relating to the university's contracts with three named banks.<sup>1</sup> You inform us that the university has no information that is responsive to one aspect of this request. You also state that the university has released some of the requested information. You have submitted information that you claim is excepted from disclosure under section 552.104 of the Government Code. You also believe that the submitted information may implicate the proprietary interests of private parties under section 552.110 of the Government Code. You notified Higher One, Inc. ("Higher One") and Woodforest National Bank ("Woodforest") of this request for information and of their right to submit arguments to this office as to why the requested

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<sup>1</sup>As you point out, this request for information includes questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body need not take affirmative steps to create or obtain responsive information that is not in its possession, so long as no other individual or entity holds such information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

information should not be released.<sup>2</sup> We have considered the exception you claim and have reviewed the submitted information.

We first note that some or all of the submitted information appears to be the subject of Open Records Letter No. 2006-04304 (2006). In that ruling, we concluded that the university must release contracts with Higher One and Woodforest. You do not indicate that there has been any change in the law, facts, and circumstances on which the prior ruling is based. Therefore, to the extent that it is the subject of Open Records Letter No. 2006-04304, the submitted information must be released. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

To the extent that the submitted information is not encompassed by the prior ruling, we address your claim under section 552.104 of the Government Code. This section excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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). 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 and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

In this instance, the submitted documents consist of contracts between the university and private entities. Normally, 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). Nevertheless, you argue that the release of the submitted information would give an unfair advantage to bidders. We disagree, finding that the assertion that the release of the past contracts might give a bidder an unfair advantage on future contracts is entirely too speculative. *See* Open Records Decision No. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Therefore, we conclude that you have not demonstrated that public release of the information at issue would cause specific harm to the university's interests in a competitive bidding situation. Accordingly, the university may not withhold any of the submitted information under section 552.104 of the Government Code.

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<sup>2</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Lastly, we note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As this office has received no correspondence from either Higher One or Woodforest, there has been no demonstration that any of the submitted information is proprietary for the purposes of the Act. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the university may not withhold any of the submitted information under section 552.110 of the Government Code.

In summary: (1) to the extent that the submitted information is the subject of Open Records Letter No. 2006-04304, the information must be released; and (2) the university must also release any submitted information that is not encompassed by the prior ruling.

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).

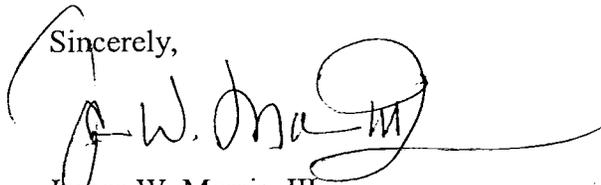
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 249976

Enc: Submitted documents

c: Mr. Kevin Duncan  
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(w/o enclosures)

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