



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2006

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
100 N.E. Loop 410, Suite 1000
San Antonio, Texas 78216

OR2006-05758

Dear Ms. Rodriguez:

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# 250586.

The Comal Independent School District (the "district"), which you represent, received a request for "a copy of the anticipated General Conditions list prepared by each proposer on the form provided by the District." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with "the provisions relating to the competitive sealed proposal process under Texas Education Code Chapter 44."² You explain that section 44.031(a) permits the district to use the "competitive seal proposal method" of contracting for purchases valued at \$25,000.00 or more and the district is using this method for the construction of a new elementary school. *See* Educ. Code § 44.031(a). You indicate that the submitted information is confidential under section 44.039(f) of the Education Code, which provides in part:

¹We understand you to assert that the submitted information is a representative sample of the requested documents. We assume that this representative sample is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(f) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate with the selected offeror a contract. . . . If the district is unable to negotiate a contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Educ. Code § 44.039(f). You state the district is currently negotiating with the selected offeror, but a contract has not been executed. You also indicate that the submitted information is confidential under section 44.035 of the Education Code, which provides:

(a) The board of trustees of a school district that is considering a construction contract using a method specified by Section 44.031(a) must, before advertising, determine which method provides the best value for the district.

(b) The district shall base its selection among offerors on criteria authorized to be used under Section 44.031(b). The district shall publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offerors and the relative weights given to the criteria.

(c) The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Educ. Code § 44.035. However, we note that nothing in section 44.039(f) or section 44.035 of the Education Code makes information confidential. We therefore conclude that none of the submitted information may be withheld pursuant to section 552.101 in conjunction with these sections. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Therefore, the submitted information must be released to the requestor.

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).

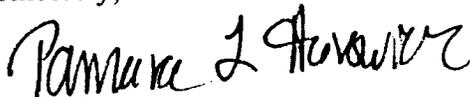
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/eb

Ref: ID# 250586

Enc. Submitted documents

c: Mr. Earl W. Pitchford
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P.O. Box 698
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(w/o enclosures)