



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2006

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2006-06541

Dear Ms. Chang:

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# 250745.

The City of Houston (the "city") received a request for information pertaining to proposals to provide Shared Ride Van Service for George Bush Intercontinental and William P. Hobby Airports. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.113, 552.128, and 552.131 of the Government Code. In addition, you state that the city notified those entities whose proprietary interests might be implicated by the request of their right to submit comments to this office pursuant to section 552.305 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted on behalf of the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city has voluntarily made the information at issue available to the public. Section 552.007 of the Government Code gives a governmental body the discretion to voluntarily release public information that is not confidential by law. *See Gov't Code § 552.007(a)*. Section 552.007 requires that any such

¹The third parties that were sent notice pursuant to section 552.305 are First Transit, Supershuttle, and Texans Shuttle.

information a governmental body publicly discloses be made available to any member of the public. *See* Gov't Code § 552.007(b). The requestor asserts that the city publicly released the requested information by providing it to four private citizen members of the Transportation Evaluation and Selection Committee (the "committee"). This office previously addressed whether the disclosure of information to a citizen advisory board constitutes a voluntary disclosure to the public under section 552.007(b) of the Government Code. Open Records Decision No. 666 (2000). In that decision, we concluded that the disclosure of information to a citizen advisory board created pursuant to city code or ordinance to formulate recommendations to a governmental body does not constitute a release to the public. *Id.* at 3-4. In this case, the city informs us the private citizens on the committee were appointed by the Manager of the Properties Division in the city's Aviation Department pursuant to a city ordinance. The city further advises that the committee "serves without compensation from the [c]ity, as an advisory body that evaluates the proposals, so that it can make an informed recommendation to City Council[.]" Based on the facts presented in the briefs concerning the function of the committee and its relationship with the city, we conclude that the committee is, for purposes of the Act, a part of the governmental body that created it. As such, the governmental body's disclosure of information to the committee is merely an intra-agency transfer of information. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Open Records Decision Nos. 468 at 3 (1987), 464 at 5 (1987). Because such a transfer of information does not amount to a public disclosure that triggers the section 552.007(b) selective disclosure prohibition, the city is not prevented from claiming an exception under the Act to the public disclosure of the information.

We next address the exceptions to disclosure claimed by the city. 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 state that the submitted documents pertain to bids that "are still under consideration and no contract has yet been awarded." You further state that "if the [c]ity cannot finalize a contract with one of the bidders, then the [c]ity would have to seek a contract with another company." You argue that release of the submitted information would compromise the city's negotiating position "because bidders in the new round of bidding will have the advantage of knowing what previous bidders had submitted thus far and the city's evaluation of each bid." Based upon your representations, we conclude that the submitted information may be

withheld from the requestor under section 552.104.² 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).

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.

²As our ruling on this issue is dispositive, we need not address the remaining arguments against disclosure.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 250745

Enc. Submitted documents

c: Ms. Wini Brady
Liberty Cab Company, Inc.
P.O. Box 91902
Houston, Texas 77291-1092
(w/o enclosures)

Mr. Richard Levy
Deats, Durst, Owen & Levy, P.L.L.C.
1204 San Antonio Street, Suite 203
Austin, Texas 78701
(w/o enclosures)

Mr. Doug Cerny
Pagel, Davis & Hill, P.C.
1415 Louisiana, 22nd Floor
Houston, Texas 77002
(w/o enclosures)

Mr. Rick Dunning
Senior Vice President
First Transit, Inc.
705 Central Avenue, Suite 300
Cincinnati, Ohio 45202
(w/o enclosures)

Mr. R. Brian Weir
President, CEO
SuperShuttle
14500 North Northsight Boulevard, Suite 329
Scottsdale, Arizona 85260
(w/o enclosures)

Mr. Ben Tesfamariam
President
Texans Shuttle
5959 Westheimer, Suite 212
Houston, Texas 77057
(w/o enclosures)