



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2006

Ms. Karol H. Davidson  
Staff Attorney  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2006-07706

Dear Ms. Davidson:

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# 254236.

The Texas Youth Commission (the "commission") received a request for information relating to a request for proposals for certain radio equipment and installation, including the contents of proposals and pricing information. You have submitted information that you claim is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information implicates the interests of a private party. You notified M/A – COM ("M/A") of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> We also received correspondence from M/A. We have considered all of the submitted arguments and have reviewed the submitted information.

Section 552.104 of the Government Code 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 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

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<sup>1</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).

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).

You state that the submitted information relates to competitive bidding that was closed on April 13, 2006. You explain, however, that the commission has since determined that it cannot accept any of the submitted proposals. You inform us that the project will be reopened for bidding with substantially similar specifications. You assert that release of the submitted information at this time would provide an advantage to a competitor or bidder. Having considered your representations, we conclude that you have demonstrated that the commission may withhold all of the submitted information at this time under section 552.104 of the Government Code. We note that the commission may no longer withhold this information on this basis once the bidding process has concluded and a contract has been awarded and is in effect.<sup>2</sup> *See* Open Records Decision No. 541 at 5.

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).

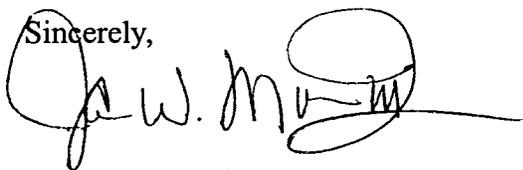
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<sup>2</sup>As we are able to make this determination, we do not address the arguments that we received from M/A.

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,  


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

JWM/sdk

Ref: ID# 254236

Enc: Submitted documents

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