



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2006

Mr. Jason Martinson  
Staff Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2006-09670

Dear Mr. Martinson:

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# 257174.

The Texas Parks & Wildlife Department (the "department") received a request for the names of all companies, including any and all subcontractors and HUBs, that responded to a specified RFO, as well as the total dollar amount of each responding company's proposal. You state that you have released the names of each bidder to the requestor. You claim that the total dollar amount of each company's proposal is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information may implicate the proprietary interests of DLT Solutions, Inc. ("DLT"). You have notified DLT of this request and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d)*; Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that DLT seeks to withhold the names of its subcontractors and HUBs, which were not submitted to this office by the department. Because such information was

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See Gov't Code §§ 552.301(e)(1)(D), .302*; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 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 RFO in question has been withdrawn by the department. You also state that the department has made revisions to the project requirements and intends to re-bid the same project after the revisions are made. You claim that release of the total dollar amounts of each proposal will allow bidders insight into their competitor's pricing, thereby jeopardizing the department's ability to obtain favorable offers once the re-bidding begins. Based on your representations and our review of the submitted information, we conclude that the department has shown that release of the information at issue will bring about specific harm to the department's interests in this particular competitive bidding situation. Accordingly, the department may withhold the total dollar amounts of each proposal, which you have highlighted, under section 552.104. As our ruling on this information is dispositive, we need not address DLT's arguments against disclosure of this same information.

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,



Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 257174

Enc. Submitted documents

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