



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2006

Ms. Heather R. Rutland
Ennis Independent School District
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
816 Congress Avenue, Suite 800
Austin, Texas 78701

OR2006-11582

Dear Ms. Rutland:

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# 261302.

The Ennis Independent School District (the "district"), which you represent, received a request for information "related to the properties purchased and desired to be purchased for a junior high school in the area of Ensign Road." You state that the district has released some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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(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). Moreover, 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. Open Records Decision No. 541 at 4 (1990). This office has long held that section 552.104 does not except information relating to competitive bidding situations once a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541, 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this case, you inform us that the district is attempting to purchase several parcels of land. You state that some of these parcels have in fact been purchased by the district, but that the remaining parcels have not been sold. You contend that release of the submitted information would reveal the rationale behind the district's attempt to purchase the land, which could harm the district's ability to purchase the unsold parcels of land at a fair price. Based on your representations and our review, we find that you have demonstrated the applicability of section 552.104, and the submitted information may be withheld on that basis. Because our ruling on this issue is dispositive, we need not address your arguments under sections 552.103 and 552.105 of the Government Code.

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 'JAP', written over a horizontal line.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 261302

Enc. Submitted documents

c: Peter and Mary Steuer
2811 Ensign Road
Ennis, Texas 75119
(w/o enclosures)