



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2006

Mr. Marc J. Schnall
Langley & Banack
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2006-11694

Dear Mr. Schnall:

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# 261289.

The City of Camp Wood (the "city"), which you represent, received a request for (1) a copy of any public notice posted for a specified city council meeting, (2) a copy of any earnest money contract for the sale of a specified property, and (3) a copy of any audio or video recording of a specified city council meeting. You state that the city will release a copy of the requested public notice and a copy of the audio recordings of the open meeting portions of the specified city council meeting. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you assert that a portion of the submitted information, which consists of an amendment to the requested contract, is not responsive to the request. The Act requires a governmental body to release only information that it believes to be responsive to a request. However, in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). Upon review, we conclude that the information at issue

is responsive to the request. We will therefore address the city's claimed exceptions with respect to this information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Gov't Code § 552.101. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request.¹ See Open Records Decision No. 495 (1988). You inform us that some of the responsive information consists of the tape recording of a closed executive session of the city council. The requestor asserts that the meeting at issue was not properly "closed" for purposes of section 551.104. However, in Open Records Decision No. 495 (1988) this office determined that the attorney general lacks the authority to make this determination for two reasons: chapter 551 of the Government Code (the "Open Meetings Act") provides the exclusive authority and procedure for challenging the confidentiality of tapes of executive sessions, and this office lacks the authority to enforce the Open Meetings Act. Accordingly, the city must withhold the requested recording from public disclosure pursuant to section 551.104(c) of the Government Code.

The city claims that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of this section 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 bidder or competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that by Resolution 06-12-06, the city council resolved that it would offer a specified property for sale to the party "offering the highest and best terms[.]" You inform us that the city provided Earnest Money Contract forms to interested parties. You acknowledge that the mayor has signed one of these contracts. However, you state that the city council, not the mayor, has the authority to approve the sale of the property at issue and that no sale has been finalized. You indicate that release of this information at this time would have a negative impact on the city's negotiating position concerning the sale of this

¹ This office lacks the authority to review certified agendas or tapes of executive sessions in connection with the open records ruling process. See Open Records Decision No. 495 at 4 (1988).

property. After considering your representations and reviewing the information at issue, we conclude that the city may withhold the information for which you claim section 552.104.

In summary, the city must withhold the tape recording of the closed meeting pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The city may withhold the submitted information under section 552.104 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 that reads "Tamara L. Harswick". The signature is written in a cursive style with a large initial "T".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 261289

Enc. Submitted documents

c: Mr. Stephen M. Coleman
Attorney at Law
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(w/o enclosures)