



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2007

Mr. Denis C. McElroy
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton St.
Fort Worth, Texas 76102

OR2007-00151

Dear Mr. McElroy:

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#268489.

The City of Fort Worth (the "city") received two requests for responses and evaluations pertaining to the city's RFP No. 06-0221: Regional Disaster Education Project. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You further claim that this information may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, the city notified the interested third parties, Legacy Uptown, The Fowler Group, Burson-Marsteller, Paige Hendricks Public Relations, Inc., Allyn & Company, InterStar Public Relations, Carmen Group Communications, Convergent Security Technologies, LLC, Redstone Visual Impressions, Verve Communications Group, New Media Gateway, The Rogers Group, and Management and Training Consultants, Inc. of the city's receipt of the requests and of their right to submit arguments to us as to why any portion of the submitted information should not be released. *See* Gov't Code §552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the arguments and have reviewed the submitted information.

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 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). 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 state that “[a]lthough an agreement has been authorized, a final contract has not yet been executed.” You further inform us that “the [c]ity is continuing to negotiate” the contract “regarding various terms of the final agreement.” Based on your assertion that a final contract has not been awarded and our review of the submitted information, we conclude that the city may withhold the submitted information pursuant to 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 268489

Enc. Submitted documents

c: Ms. Catherine Whittington
InterStar PR
610 Grove Street
Fort Worth, Texas 76102
(w/o enclosures)

Mr. Lee Rogers
201 Pecan
Fort Worth, Texas 76102
(w/o enclosures)

Ms. Maryann Spruill
Legacy Uptown
1120 South Freeway, Suite 213
Fort Worth, Texas 76104
(w/o enclosures)

Mr. Todd Davidson
The Fowler Group
6100 West Poly Webb Road
Arlington, Texas 76016
(w/o enclosures)

Mr. Mike Lake
Burson-Marsteller
1845 Woodall Rogers Freeway
11th Floor
Dallas, Texas 75201
(w/o enclosures)

Ms. Paige Hendricks
Paige Hendricks Public Relations, Inc.
1253 West Magnolia Avenue
Dallas, Texas 75206
(w/o enclosures)

Mr. Brian Mayes
Allyn & Company
3232 McKinney Avenue
Suite 660
Dallas, Texas 75204
(w/o enclosures)

Mr. Donovan McClure
Carmen Group Communications
1301 K Street, NW
Washington, DC 20005
(w/o enclosures)

Mr. Steve Higdon
Redstone Visual Impressions
3300 South Jones Street
Forth Worth, Texas 76110
(w/o enclosures)

Mr. Taylor Stensrud
New Media Gateway
5307 East Mockingbird
Dallas, Texas 75206
(w/o enclosures)

Ms. Jane E. Schlankser
InterStar Public Relations
610 Grove Street
Fort Worth, Texas 76102
(w/o enclosures)

Mr. James J. Beech
Convergent Security Technologies, LLC
d/b/a ConSecuTec
11496 Luna Road, Suite 1100
Farmers Branch, Texas 75234
(w/o enclosures)

Mr. Terry D. Loftis
Verve Communications Group
325 North St. Paul Street, Suite 2360
Dallas, Texas 75201
(w/o enclosures)

Mr. Keith Prewitt
Management and Training Consultants,
Inc.
1711 East Central Texas Expressway,
Suite 204
Killeen, Texas 76541
(w/o enclosures)