



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2007

Ms. Maria Miller
Officer for Public Information
Dallas County Community College District
701 Elm Street
Dallas, Texas 75202-2470

OR2007-02847

Dear Ms. Miller:

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# 273883.

The Dallas County Community College District (the "district") received a request for information related to RFP number 11183 regarding textbook services. You state that some responsive information has been released to the requestor, but claim that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you claim that some of this information may be subject to the proprietary interests of Barnes & Noble College Bookseller, Inc. ("Barnes & Noble"), Follett Higher Education Group, Inc. ("Follett"), Nebraska Book Company, Inc. ("NBC"), and Texas Book Company ("TBC"). You inform us, and provide documentation indicating, that you notified Barnes & Noble, Follett, NBC, and TBC of the request and of their opportunity to submit comments to this office. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). We have

considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.104 of the Government Code exempts 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, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not exempt from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that no contract has yet been awarded and the district “is currently evaluating the proposals.” You assert that release of the submitted information before the negotiating process ends, and before a final contract is executed and approved by the board of trustees, could enable a bidder to submit additional information in its oral presentation. You indicate that the release of the information at issue before a contract has been finalized would give one bidder an advantage over the others in this RFP selection process. Based upon your representations, we conclude that the submitted information may be withheld from the requestor under section 552.104 of the Government Code.² *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). We note that the district may no longer withhold this information under section 552.104 once a contract has been awarded and executed.

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

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²As our ruling on this issue is dispositive, we need not address the remaining submitted arguments against disclosure.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 273883

Enc. Submitted documents

c: Ms. Marty Case
Richland Bookstore
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(w/o enclosures)

Ms. Pamela Keeling
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(w/o enclosures)

Ms. Paula Eardley
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Barnes & Nobles Booksellers
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Mr. Alan Stratman, Vice President
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Mr. John Callahan
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Nebraska Book Company
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