



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2007

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2007-03123

Dear Ms. Sims:

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# 277817.

The City of Lubbock (the "city") received a request for the proposal and pricing information submitted by Redflex Traffic Solutions, Inc. ("Redflex") and an agreement between the city and Redflex. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also state that release of the submitted information may implicate Redflex's proprietary interests. Accordingly, you state you have notified Redflex of the request and its right to submit arguments to this office as to why the information pertaining to it 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 in certain circumstances).¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although the city claims that the submitted information may be excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general opinion if it believes that a person's privacy or property interests may be involved. *See Gov't Code* § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

Initially, you inform us that the requested proposal and pricing information was the subject of a previous ruling issued by this office. In Open Records Letter No. 2007-01893 (2007), we held, in part, that the city may withhold Redflex's proposal and pricing information under section 552.104 of the Government Code. We presume that the pertinent facts and circumstances have not changed since the issuance of this previous ruling. Thus, we determine that the city may continue to rely on our ruling in Open Records Letter No. 2007-01893 as a previous determination and withhold the proposal and pricing information under section 552.104 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We now address your arguments regarding 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. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a bid has been awarded and a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978). In this instance, you state that city has not yet awarded a contract in regard to the bid request at issue. Based on your representation and our review of the information at issue, we conclude that the city may withhold the submitted information under section 552.104 of the Government Code. We note that the city may no longer withhold this information under section 552.104 once a contract has been awarded or executed.²

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

²As our ruling is dispositive, we need not address the city's remaining argument under section 552.101.

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,



M. Alan Akin
Assistant Attorney General
Open Records Division

AA/eb

Ref: ID# 277817

Enc. Submitted documents

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