



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2007

Mr. Robert L. Blumenfeld
Mendel Blumenfeld, L.L.P.
5809 Acacia Circle
El Paso, Texas 79912

OR2007-03815

Dear Mr. Blumenfeld:

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# 275023.

The Housing Authority of the City of El Paso (the "authority"), which you represent, received a request for information relating to a specified solicitation number. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also believe that some of the requested information implicates the proprietary interests of third parties under section 552.110 of the Government Code. You indicate that the authority notified J&J General Contracting, Inc. ("J&J"); Noble General Contractors; and Spartan Construction Services, Inc. ("Spartan") of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We received correspondence from an attorney for J&J and from Spartan. We have considered all of the submitted arguments and have reviewed the information you submitted.

We first note that the submitted documents include a resolution adopted by the authority. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The resolution that we have marked is analogous to an ordinance and must be released.

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We also note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). In this instance, section 552.022(a)(1) is applicable to a completed report made of, for, or by the authority. Section 552.104 provides, however, that “[t]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under [the Act] does not apply to information that is excepted from required disclosure under this section.” *Id.* § 552.104(b). Therefore, we will determine whether the authority may withhold the completed report under section 552.104. We also will consider your arguments and those of J&J and Spartan with regard to the remaining information.

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of this exception is to protect a governmental body’s interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information relates to competitive bidding for a site development project for a public housing community. You inform us that the authority’s board of directors has voted to award the contract to Spartan. You explain, however, that the authority is in the process of formalizing a contract with Spartan and that a contract has yet to be executed. You assert that because a contract has not been executed, the procurement process is not yet concluded. Based on your representations, we conclude that the authority may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed and is in effect.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).

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

²As we are able to make this determination, we need not address your other arguments or those of J&J and Spartan.

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).

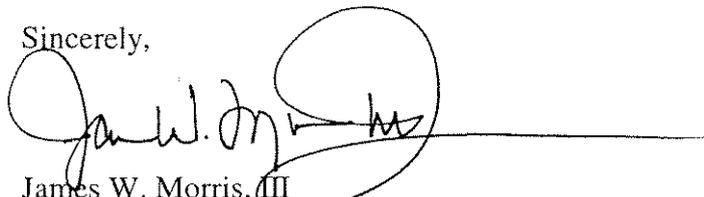
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III", is written over a horizontal line. The signature is stylized and includes a large circular flourish.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 275023

Enc: Submitted documents

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