



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2007

Mr. Russell W. Malm
County Attorney
County of Midland
200 West Wall Street, Suite 104
Midland, Texas 79701

OR2007-04787

Dear Mr. Malm:

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# 277232.

The Midland County Purchasing Agent (the "county") received two requests for the current inmate telephone service contract for the county jail. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and 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 situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate 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 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that in some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids

for the same or similar goods or services on a recurring basis. *See id* at 5. You inform us that the requested information relates to an existing contract. You explain that the county advertised for bids for telephone services in August of 2005, but rejected all bids in October, 2005. You further explain that the county intends to re-bid the contract. You state that release of the requested contract “would be harmful to [the county’s] interests in the bidding process [because the contract] provides all of the relevant details of the bid that was accepted the last time[, including] financial terms, along with other important terms such as maintenance and installation.” After review of your arguments, we find you have not established that the county has an ongoing competitive interest that would be harmed by release of the information at issue. Further, we find that because costs and circumstances would change for future contracts, the assertion that release of the requested information might give a competitor an unfair advantage in bidding on possible future contracts is too speculative. *See* Open Records Decision No. 509 at 5 (1988). Accordingly, we conclude that you have not demonstrated that public release of the information at issue would cause specific harm to the county’s interests in a particular competitive bidding situation. Therefore, the county may not withhold the information at issue from public disclosure under section 552.104 of the Government Code. The submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 277232

Enc. Submitted documents

c: Mr. Rudy Pena
Account Executive
Evercom Systems, Inc.
P.O. Box 542373
Dallas, Texas 75354
(w/o enclosures)

Ms. Erin Stafford
Marketing Coordinator
Ads-Telcom
595 Round Rock West Drive, Suite 604
Round Rock, Texas 78681
(w/o enclosures)