



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2007

Ms. Nancy Nelson  
Associate Vice President  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2007-07803

Dear Ms. Nelson:

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# 281705.

The El Paso County Community College District (the "college") received a request for copies of the 2005 bank depository bid proposals. The college takes no position on whether the proposals are excepted from disclosure, but you state that release of this information may implicate the proprietary interests of Bank of America ("BOA"), JPMorgan Chase Bank ("Chase"), and Inter National Bank ("National"). Accordingly, you inform us, and provide documentation showing, that you notified these parties of the request and of the right of each to submit arguments to this office as to why its information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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). We have reviewed the submitted information.

Initially, we address your obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure.

Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. See Gov't Code § 552.301(b). You state that the college received the present request on March 29, 2007. However, you did not ask this office for a decision until April 17, 2007. Therefore, the college failed to request a decision from this office within the ten-business-day deadline prescribed by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the third party interests at issue can provide compelling reasons to withhold this information, we will address whether the submitted information is excepted under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from BOA, Chase, or National explaining why their requested information should not be released. We thus have no basis for concluding that any portion of the requested proposal information constitutes these parties' proprietary information protected under section 552.110, and none of it may be withheld on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Because we have received no arguments, the submitted information must be released.

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).

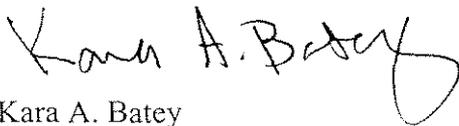
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/mcf

Ref: ID# 281705

Enc. Submitted documents

c: Ms. Giselle Smith-Johnson  
Wells Fargo  
Principal Industry Specialist  
221 North Kansas Street  
El Paso, Texas 79901  
(w/o enclosures)

Ms. Susan A. Melendez  
Business Development Executive  
Inter National Bank  
1790 North Lee Trevino Drive  
El Paso, Texas 79936  
(w/o enclosures)

Mr. Joseph W. Mullings  
Senior Vice President/Manager  
JPMorgan Chase Bank  
201 East Main Street, Floor 3  
El Paso, Texas 79901  
(w/o enclosures)

Mr. Paul N. Weaver  
Senior Vice President & Client Manager  
Bank of America  
303 Roma Avenue, NW  
Albuquerque, New Mexico 87102-263  
(w/o enclosures)