



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2007

Ms. Julie Y. Fort
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2007-08535

Dear Ms. Fort:

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# 282877.

The Town of Prosper (the "town"), which you represent, received two requests for a copy of the *town manager contract* approved or offered by the town council on April 10, 2007, and one request for a copy of a specified letter given to the town council by a named individual. You state that you have released the letter to the requestor who asked for it. You claim that the requested contract is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the contract at issue is excepted under section 552.104 of the Government Code. 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 when it is involved in certain commercial transactions. We have concluded that when a governmental body demonstrates that it has specific marketplace interests, it must be afforded the right to claim the "competitive advantage" aspect of section 552.104. Open Records Decision No. 593 at 4 (1991). Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

You state that the town has been actively seeking a candidate for town manager for the last four months. You inform us, and provide documentation showing, that the town is competing with other nearby cities that are also seeking town managers. You state that the

availability of town manager positions in the area, combined with the small number of qualified candidates, makes competition difficult. You further provide an affidavit from the town's mayor reiterating these facts. You argue that release of the information at issue "will directly harm [the town's] ability to compete with other cities and will affect the decision of other potential applicants" who, believing the offer reflected in the submitted contract is too low to meet their needs, will not apply. Based on your representations and our review of the information at issue, we agree that the town is in a competitive situation. However, you further state that the town "may offer different amounts and contract terms to other candidates whose qualifications are different than [the named individual]." By stating that the contract terms may change depending on the circumstances, we find that you have not demonstrated how competitors of the town could use the submitted information to competitively harm the town in its attempt to hire a town manager. Accordingly, because we find that you have not shown that actual or specific harm would result from the release of the contract at issue, we conclude that the town may not withhold submitted information under section 552.104 of the Government Code. As you raise no further exceptions against the disclosure of the submitted information, it must be released to the requestors.

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), ©. 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 282877

Enc. Submitted documents

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