



January 6, 2000

Mr. Fletcher H. Brown
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Attorneys at Law
1801 South Mopac, Suite 300
Austin, Texas 78746

OR2000-0066

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#130931.

The Llano County Memorial Hospital Authority (the "authority") received a request for the following information: (1) the feasibility study for the proposed Marble Falls acute healthcare facility; and (2) verification documentation from the outside auditing firm. You have submitted the following documents as responsive to this request:

1. Exhibit B: Notice of Meeting of the Board of Directors of Llano County Hospital Authority for September 23;
2. Exhibit C: Three documents prepared by Llano County Hospital Authority's accountants;
3. Exhibit D: Document titled "Feasibility Study Background Information," dated June 23, 1999; and
4. Exhibit E: Document titled "Feasibility Study," dated June 23, 1999.

You contend that these documents are excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

You initially argue that the submitted exhibits must be withheld under section 552.110 of the Government Code as the authority's trade secrets. The documents at issue were created by the authority's agents to determine the feasibility of opening a new hospital facility. Thus, the documents are the property of the authority, not a private party. We note that the trade secret prong of section 552.110 is designed to protect the property interests of *third parties*, not governmental bodies. *See* Gov't Code § 552.110 (stating that trade secret is information obtained from *person* and is privileged or confidential by statute or judicial decision); *cf.* RESTATEMENT OF TORTS § 757 cmt. b (1939) (defining trade secret as process or device for *continuous use* in operation of business, not simply information as to single or ephemeral events in conduct of business); Open Records Decision No. 605 (1992) (mere fact that information was discussed in executive session does not make it confidential under Public Information Act). Therefore, we conclude that Exhibits C, D, and E may not be withheld under section 552.110(a).

You also argue that Exhibits C, D, and E are excepted from disclosure under section 552.104. Section 552.104 protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. Open Records Decision No. 593 at 4 (1991). Second, a governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. 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.

¹As noted above, Exhibit B is a copy of the authority's notice of a specific board meeting. This notice appears to comport with the requirements of section 551.041 of the Government Code, which states that a government body must provide written *public* notice of the date, time, place, and subject of each meeting it holds. Since the contents of Exhibit B are clearly public, we presume that the document was submitted solely for informational purposes.

You generally allege that disclosing information about the authority's new hospital facility will harm the authority's competitive interests. However, you have not provided us with specific facts or arguments to support this allegation. Consequently, Exhibits C, D, and E may not be withheld from disclosure under section 552.104. *See also* Gov't Code § 552.022(5) (stating that all information used to estimate need for or expenditure of public funds or taxes by governmental body is public upon completion of estimate). Accordingly, the authority must release the submitted information 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).

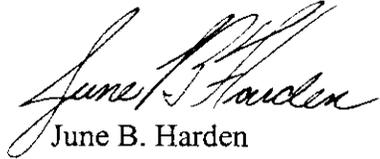
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/KSK/ljp

Ref: ID# 130931

Encl. Submitted documents

cc: Mr. Tim Chorney
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(w/o enclosures)