



January 20, 2000

Mr. Juan E. Gonzalez
420 West University Drive
Edinburg, Texas 78539

OR2000-0197

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131320.

The City of Mercedes (the "city") received a request for various documents including a copy of a draft contract between OMI and the city.¹ You claim that the draft 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.²

We will first address your argument that the draft contract is not a document described under section 552.022(a)(5) of the Government Code. Section 552.022(a) provides that:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

¹Since you have not submitted the remaining requested information, we presume that this information has been released. Gov't Code § 552.301.

²You also submitted a document that is not responsive to the request for information; thus, it is being returned to you with this ruling.

Even if the document you submitted falls within section 552.022(a)(5), you explain that the draft contract is not complete nor is any estimate of the need for or expenditure of public funds or taxes by the city final. Therefore, we conclude that the draft contract is not now a document described under section 552.022(a)(5). Consequently, we will address your argument against disclosure of the submitted information.

Section 552.104 protects "information which, if released, would give advantage to competitors or bidders." The principal purpose of this exception is to protect a governmental body's purchasing interests by preventing a competitor or bidder from gaining an unfair advantage over other competitors or bidders. It requires a showing of some actual or specific competitive harm in a particular competitive situation. A general allegation or remote possibility that an unknown competitor will gain an unfair advantage will not suffice. Open Records Decision No. 514 (1988), Open Records Decision No. 541 (1990).

You state that the city and OMI have prepared draft contracts for the possibility of privatizing the city's public works department or seeking consulting services. You argue that release of the draft contract would provide other private entities a distinct advantage in formulating proposals in the event the city decides to solicit contracts for these services. The remote possibility that the city may solicit contracts for public works and consulting services and the general allegation that an unknown competitor will gain an unfair advantage will not suffice to prevent the disclosure of the draft contract. *See* Open Records Decision No. 593 at 2 (1991); *see also* Open Records Decision No. 331 (1982) (section 552.104 does not apply when there is only a single entity seeking a contract). Therefore, the city may not withhold the draft contract under section 552.104 and the draft document 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).

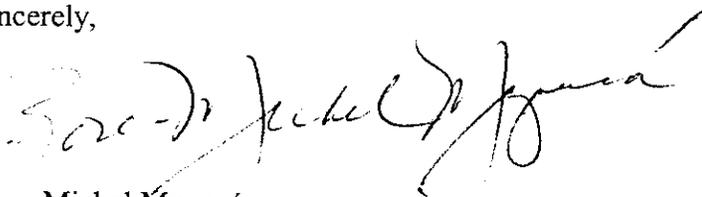
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, 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 Department 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,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 131320

Encl. Submitted documents

cc: Mr. David Garza
2190 West Highway 83
Mercedes, Texas 78570
(w/o enclosures)