



February 24, 2000

Mr. Michael Spurlock
General Counsel
El Paso Water Utilities Public Service Board
P.O. Box 511
El Paso, Texas 79961-0001

OR2000-0679

Dear Mr. Spurlock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132303.

The El Paso Water Utilities Public Service Board ("PSB") received a request for copies of Telecation, Inc.'s proposal submitted in response to PSB's solicitation for certain services. The requestor also seeks the final contract between PSB and Telecation, Inc. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, you notified Telecation, Inc. whose information is responsive to the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The third party notice must be sent within ten days of the governmental body's receipt of the request and it must include a copy of the written request for information and a statement in the form prescribed by the attorney general.¹

Section 552.110 may protect from disclosure the information a third party has submitted to a governmental body. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (a) trade secrets, and (b) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. Telecation, Inc. did not submit objections to the release of its

¹ The form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at www.oag.state.tx.us.

respective information; therefore, we have no basis to conclude that its information is excepted from disclosure under section 552.110. *See* Open Records Decision No. 661 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret).

Section 552.104 of the Government Code states:

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). As the exception was developed to protect a governmental body's interests, a governmental body may waive section 552.104. *See* Open Records Decision No. 592 at 8 (1991).

We have previously held that, so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive, and, therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). You have informed us that Telecation, Inc. has been selected as the preferred provider, but the contract has not yet been executed.

Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. Open Records Decision No. 541 (1990). As you state that the contract has not yet been executed you may withhold the requested information from required public disclosure under section 552.104.

Because we are able to make a determination under section 552.104, we need not address your other claimed exceptions. 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.

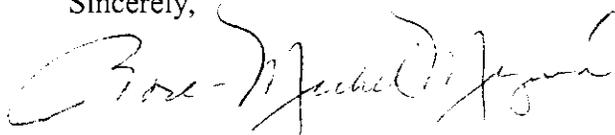
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Munguía
Assistant Attorney General
Open Records Division

RMMjc

Ref: ID# 132303

Encl. Submitted documents

cc: Mr. Gary Gostecnik
Analytical Automation Specialists
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Baton Rouge, Louisiana 70809
(w/o enclosures)