



June 7, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 East. 11th Street
Austin, Texas 78701-2483

OR2000-2220

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135955.

The Texas Department of Transportation (the "department") received a request for "any and all documents filed with [the department by Big Creek Construction, Ltd. ("Big Creek") and Glen-Wade Contractor's, Inc. ("Glen-Wade")] for any purpose whatsoever, from January 1, 1996 through the present." You have released to the requestor "most" of the responsive information. You have submitted for our review additional information that is responsive to the request. You assert that this information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You have also notified Big Creek and Glen-Wade of the request by a letter dated April 4, 2000 in compliance with section 552.305 of the Government Code. *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). Mr. Charles Buenger, an attorney, responded to the notices on behalf of his clients, Big Creek "and its alleged predecessor" Glen-Wade.¹ Big Creek and Glen-Wade also assert that the

¹Among other arguments, Mr. Buenger states that the "request is entirely insufficient" because the wording of the request references "Glen Wade Construction, Inc." rather than "Glen-Wade Contractor's Inc." We disagree. A governmental body has a good faith duty to relate a request to that information which it holds. Open Records Decision No. 561 at 8 (1990). Moreover, the copy of the request that the department provided this office (pursuant to Gov't Code § 552.301(e)(1)(B)) contains a handwritten correction indicating Glen-

information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.²

Section 552.104 of the Government Code states that information “is excepted from [required public disclosure] 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). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989). A general allegation of a remote possibility that some unknown “competitor” might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 at 2 (1987). Upon careful review of the arguments submitted by the department, we believe that the department has demonstrated that public release of the information at issue would cause specific harm to the department’s interests in particular competitive bidding situations.

We note that the information at issue contains completed “audit reports,” and that the department asserts this information is not subject to release under section 552.022 of the Government Code. In relevant part, this provision states that unless expressly confidential under other law “a completed report, audit, evaluation or investigation made of, for, or by a governmental body” is public information and not excepted from required disclosure. Gov’t Code § 552.022(a)(1). The audits at issue pertain to private third parties. They indicate on their face that they were prepared for the third party, and not for the department. We accordingly agree that section 552.022(a)(1) does not encompass this information. Therefore, we conclude that the department may withhold the information in its entirety under section 552.104 of the Government Code.

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.

Wade Contractor’s Inc. We therefore assume that the department contacted the requestor to clarify the information sought. *See* Gov’t Code § 552.222(b); Open Records Decision No. 304 (1982).

²We note that section 552.104 protects the interests of governmental bodies, and is not designed to protect the interests of private parties that submit information to governmental bodies. *See* Open Records Decision No. 592 at 8-9 (1991). We also note that the requestor has submitted comments to this office pursuant to section 552.304 of the Government Code. *See* Gov’t Code § 552.304. The requestor essentially argues that Big Creek and Glen-Wade did not meet their burden under section 552.110. While we have carefully considered all of the submitted information, we note that the requestor did not respond to the arguments submitted by the department.

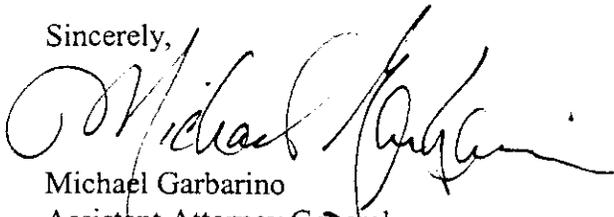
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 135955

Encl. Submitted documents

cc: Mr. Paul Vigushin
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