



July 13, 2000

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-2624

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137054.

The Employees Retirement System of Texas ("ERS") received a request for the winning bid, including the bidder's price proposal, and the evaluation panel's recommendation, all relating to a request for proposal for the TexFlex program. You express no opinion as to the availability of the requested information, but defer to the winning bidder, Fringe Benefits Management Company ("FBMC"), to establish that the requested information is excepted from disclosure. You have provided the requested information for our review.

Because the property and privacy rights of third parties may be implicated by the release of the requested information, you notified FBMC. *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 statement you provided FBMC notified FBMC of its right to submit in writing to the attorney general specific reasons as to why the requested information should be withheld from public disclosure and of FBMC's ten-business-day deadline to submit those reasons. To date this office has not received any arguments or briefs from FBMC to support a claim that the information should be withheld.¹ Therefore, we have no basis to conclude

¹We acknowledge the inclusion in the submitted materials of an email message from FBMC to the ERS which states "our proposal contains proprietary information on the following pages," listing the page numbers. We do not consider that email message to constitute a brief to this office because it was not sent in response to the section 552.305 notice, it was not sent to this office as required by section 552.305, and it

that the company's proposal is excepted from disclosure. *See* Open Records Decision Nos. 639 at 4 (1996) (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), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

As neither the ERS nor the third party whose information is at issue raised or supported an exception to required disclosure, we have no basis to withhold the requested information; therefore, the ERS must release the information.

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

makes only a conclusory statement that some of the requested information is proprietary, without claiming or supporting a specific exception to required disclosure.

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 137054

Encl. Submitted documents

cc: Mr. Phillip Baker
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cc: Ms. Lorraine Ritch
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