



July 28, 2000

Mr. William T. Buida
Supervising Attorney
Texas Department of Human Services
P O Box 149030
Austin, Texas 78714-9030

OR2000-2867

Dear Mr. Buida:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137959.

The Texas Department of Human Services (the "department ") received a request for two proposals in response to RFO #GT00016. You state that the proposal from the corporation which was awarded the contract will be released. You request our decision as to whether the remaining requested proposal is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You have provided the requested proposal for our review.

You have not submitted comments in support of the exceptions you raise; however, because the property and privacy rights of third parties may be implicated by the release of the requested information, you notified SPR, 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, dated June 6, 2000, included a copy of the written request for information and a statement in the form prescribed by the attorney general. It informed SPR, Inc., 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. This office has not received any arguments or briefs from SPR, Inc. Therefore, we have no basis to conclude that the proposal is excepted from disclosure by section 552.110. *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).¹

You also ask whether the information may be excepted from required disclosure by section 552.104. Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). To avail itself of the protection of this exception, a governmental body must demonstrate potential harm to its interests in a particular competitive situation. See Open Records Decision No. 463 (1987). The protection afforded by section 552.104 generally ends after bidding is completed and the contract has been awarded. See Open Records Decision 541 (1990). You tell us that the contract has been awarded and do not explain how release of the information now could harm the department’s interests. Therefore, none of the responsive information may be withheld under section 552.104 of the Government Code.

The department must release the requested 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;

¹We note that you also ask whether the requested information may be excepted from required disclosure by section 552.101. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” As no judicial decisions or constitutional or statutory law outside the Public Information Act, chapter 552 of the Government Code, have been raised, we will not address section 552.101. See Open Records Decision No. 652 (1997).

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 137959

Encl. Submitted documents

cc: Mr. Roy Mata
RZ Associates, Incorporated
11409 Magna Court
Austin, Texas 78739
(w/o enclosures)

cc: Mr. Les N. Anderson
SPR, Inc.
800 West Airport Freeway, Ste. 600
Irving, Texas 75062
(w/o enclosures)