



October 27, 2000

Ms. Rebecca Brewer
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P.O. Box 1210
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OR2000-4185

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140568.

The City of Frisco (the "city"), which you represent, received a request for information regarding bids the city received in regard to the Warren Sports Complex, Phase III. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation was pending or reasonably anticipated on the date the request was received, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990); Gov't Code § 552.103. The governmental body must meet both prongs of this test for information to be excepted under section 552.103.

You have submitted correspondence that indicates that the requestor represents a company that submitted a bid in regard to the Warren Sports Complex, Phase III. The requestor has sent the city several letters threatening to sue the city should the city not award the bid to the requestor's client. The requestor represents to us, and it appears from the submitted materials, that the city has awarded the contract to another bidder. We find that the city has shown that it reasonably anticipates litigation. Moreover, it is clear that the submitted documents relate to the anticipated litigation. Therefore, the city has met its burden under section 552.103 and, consequently, it may withhold some of the submitted information under that provision.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). We note that it is apparent that the opposing party has seen that some of the submitted documents, such as the requestor's client's bid proposal. We emphasize that the city must release all such documents to the requestor. Furthermore, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Finally, despite the anticipated litigation, the submitted information includes certain documents that must be made available for inspection under section 252.049 of the Local Government Code. Section 252.049 provides that "[a]ll proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection." Local Gov't Code § 252.049(b). The submitted documents include the bid proposals of the requestor's client and three other companies. As stated above, it appears that the city has awarded the contract to one of the bidding companies. Because we have received no arguments from the city or from the other bidding companies regarding whether the bids contain trade secrets, we have no basis for concluding that the bids contain trade secrets. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released). Furthermore, we know of no law that would make any portion of the submitted bids confidential. Therefore, assuming that a contract has indeed been awarded, the city must make the bid proposals available for inspection. *See* Local Gov't Code § 252.049(b); *see also* Open Records Decision No. 623 at 3 (1994) (noting that information made available by a statutory provision outside the Public Information Act (called "Open Records Act" at that time) may not be subject to Public Information Act's exceptions); Open Records Decision No. 451 at 3-4 (1986) (finding that specific statute affirmatively requiring release of information at issue prevails over litigation exception of Public Information Act).

In conclusion, if the city has awarded a contract in regard to the submitted bid proposals, then under section 252.049 of the Local Government Code, the city must make the submitted bid proposals available for inspection. Under section 552.103, the city may withhold from disclosure the remainder of the submitted information to the extent it has not been seen by the opposing party in the anticipated litigation.¹

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

¹Because section 552.103 and section 252.049 are dispositive of this matter, we do not address your arguments regarding sections 552.107 and 552.111.

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).

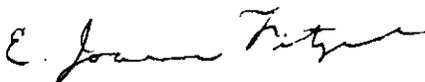
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er †

Ref: ID# 140568

Encl: Submitted documents

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(w/o enclosures)