



December 21, 2000

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla  
Dallas, Texas 75201

OR2000-4828

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142522.

The City of Dallas (the "city") received a request for proposals submitted for the Surety and Insurance Support Services Contract as well as video tapes of the oral presentation interviews, the contract between the city and the current provider, a copy of the draft contract with the selected proposer, the scoring of all proposals and a list of the selection committee members. You state that the list of selection committee members will be released but you do not have a written contract with the current provider or a draft contract with the selected proposer.<sup>1</sup> The city received a second request for twelve items of information relating to the Surety and Insurance Support Services Contract including a specified proposal and a copy of any minutes, video or tape recordings of any meetings in which the contract was discussed. You state that you have no information responsive to items 4 and 7 and you do not have any meeting minutes or videotape of meetings other than the videotape presentations of the proposers. You state that you have released the remaining requested information to the second requestor.

Although you do not raise an exception to disclosure on behalf of the city, you advise this office that the requested proposals and videotape presentations may involve the proprietary

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<sup>1</sup>The Public Information Act (the "Act") only applies to information in existence at the time of the request. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). However, a governmental body must make a good faith effort to relate a request for information to information which it holds. *Id.*

or property interests of Jenkins Insurance Agency (“Jenkins”), SCDP, Inc. (“SCDP”), and SSP Consulting, L.C. (“SSP”). You have submitted a copy of the letters notifying these companies about the request as required by section 552.305(d). *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).

As of the date of this letter, Jenkins and SCDP have not submitted to this office any reasons explaining why the requested information should not be released.<sup>2</sup> Therefore, we have no basis to conclude that the responsive information is excepted from disclosure. *See* Gov’t Code § 552.110(b) (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), 542 at 3 (1990). Although an attorney for SSP submitted a letter objecting to the release of the requested proposal and videotape, SSP did not establish that any of its information constituted trade secrets or commercial or financial information. Therefore, we have no basis to find that SSP’s proposal and videotape are excepted under section 552.110. Thus, the city must release the requested proposals and videotapes to the requesters.

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).

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<sup>2</sup>Section 552.305(2)(B) provides that a person is entitled to submit comments to this office as to why the requested information should be withheld. The comments should be submitted to this office no later than the tenth business day after receipt of the governmental body’s notice letter.

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 Hadassah Schloss at 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 142522

Encl: Submitted documents

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