



February 14, 2001

Ms. Tracy B. Calabrese
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-0552

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144189.

The City of Houston (the "city") received a request for various types of information regarding the Bayou Place Project. You claim that a portion of the requested information is excepted from disclosure under section 552.104 of the Government Code. In addition, you have notified a potentially interested third party of the request for information pursuant to section 552.305. *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). We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.¹

As noted above, the city informed a third party of the request for information. The third party seems to be, for practical purposes, one entity consisting of David Cordish, the Cordish Company, and the 500 Texas Avenue Limited Partnership, hereinafter referred to collectively as "Cordish." Initially, Cordish, through its attorneys, submitted a series of arguments, claiming that portions of the requested information were excepted from public disclosure under sections 552.101 and 552.110 of the Government Code. However, the requestor has since sent us a letter dated January 23, 2001 to which was attached a letter dated January 19, 2001. The attached letter contains an agreement in which Cordish specifically

¹We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

withdraws its objections to the city's release of the requested information. Although the agreement pertains in part to "a subpoena duces tecum served on the City" in litigation between the two parties, it also explicitly pertains to the "Texas Open Records Act request submitted by Brown's counsel, Jett Williams." This agreement is signed by the requestor and by Michael J. Mazzone of Dow, Cogburn & Freidman, P.C., counsel for Cordish.² Accordingly, we consider Cordish's objections to release of the requested information to be withdrawn.

We now turn to the city's argument regarding section 552.104 which the city claims applies to Exhibits 2A, 2B, and 2C. 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). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 at 4 (1990).

You explain that the city has been involved in negotiations with Cordish over the development of a portion of the Bayou Place. While a tentative agreement has been reached, approval by the City Council is required before a contract can be finalized. You explain further that release of Exhibits 2A, 2B, and 2C prior to a contract becoming final would compromise the city's negotiating position because details of its negotiations with Cordish would be available to other prospective proposers. Based on your arguments and our review of the documents, we find that the city may withhold the information represented by Exhibits 2A, 2B, and 2C under section 552.104. However, we note that once the negotiations have been completed, the city may not continue to withhold this information under section 552.104. Open Records Decision No. 541 at 5 (1990).

In conclusion, the city may withhold Exhibits 2A, 2B, and 2C under section 552.104 so long as its negotiations remain pending. The city must release the remainder of the requested 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

²It appears that the requestor copied Mr Mazzone on the letter dated January 23, 2001 which refers to the attached agreement.

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).

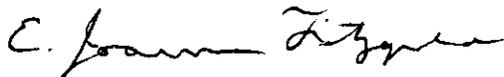
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 144189

Encl: Submitted documents

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