Office of the Attorney General • State of Texas
JOHN CORNYN

February 15, 2001

Mr. S. Stephen Hilmy
Gary, Thomasson, Hall & Marks, P.C.
Attorneys at Law
P.O. Box 2888
Corpus Christi, Texas 78403-2888

OR2001-0588

Dear Mr. Hilmy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144370.

The Del Mar College District (the "college"), which you represent, received a request for copies of any proposals and bids submitted to the district for establishment of a bookstore, a list of the names of all persons appointed by the district to the bookstore review committee (the "committee"), as well as any documents used to establish the committee or created by any member of the committee. The requestor also asked for dates and times of committee meetings including any meeting notes or minutes. You state that most of the requested documents are being made available to the requestor. However, you claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the representative samples submitted as Exhibits I and II and Exhibit III.[1]

You assert that the requested information is excepted from disclosure based on section 552.104 of the Government Code. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *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 that submitted to this office.

You have submitted a sample bid, committee notes made during the evaluation process, and two letters from one of the bidders which you state parallel the contents of that bidder's proposal. You state that the submitted records relate "to an ongoing competition or bidding for the services of establishment of a bookstore on the College campus, and involve information which if released may give advantage to a competitor or bidder vying to provide such services to the College." You inform us that the committee is still evaluating the proposals and has yet to rank and select the successful bidder. Therefore, we conclude that the submitted information is excepted from disclosure based on section 552.104 until such time as the contract is awarded.

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).

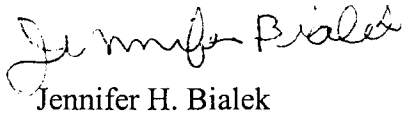
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

JHB/er

Ref: ID# 144370

Encl: Submitted documents

cc: Mr. Jerry McCord
Del Mar Book Store
2501 Ayers Street
Corpus Christi, Texas 78404
(w/o enclosures)