



July 9, 2001

Ms. Cathy Bradford
Open Records Coordinator
Texas Department of Parks & Wildlife
4200 Smith School Road
Austin, Texas 78744-3291

OR2001-2925

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149260.

The Texas Department of Parks and Wildlife (the "department") received a request for a copy of bids submitted by Sherry Matthews Advertising and Public Relations ("Sherry Matthews") and The Davis Group, Inc., to the department for its "Boating Safety Message Radio Buy" campaign. You indicate that the requested information may include some proprietary information of the bidders. Consequently, you notified Sherry Matthews and The Davis Group pursuant to section 552.305 of the Government Code. Based on your correspondence with the bidders, you contend that certain portions of the requested information may be excepted from disclosure under section 552.110 of the Government Code. We have also received a letter from The Davis Group in support of withholding portions of its bid. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.110 of the Government Code protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. You contend that portions of the requested information fall under the second prong of section 552.110. This prong of section 552.110 requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that disclosure of the information "would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999).

You contend that the information associated with the costs for obtaining radio spots submitted by the bidders is excepted under section 552.110(b) because, if released, "it would hurt [the bidders'] competitive position in the marketplace, as other bidders would be able to anticipate their bids in future bidding situations involving radio airtime." You further indicate that "releasing information concerning the rates charged by the various radio stations to the individual bidders may impair the bidders' ability to negotiate with these radio stations in the future." Based on your arguments and our review of the information, we agree that the information relating to the cost for radio spots is excepted from disclosure under section 552.110(b). We have marked the information that is excepted under section 552.110(b) and must be withheld. However, neither you nor the bidders have demonstrated how the release of the remainder of the information at issue would cause substantial competitive harm to the bidders if disclosed. Therefore, you must release the remainder of the requested information. 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).

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).

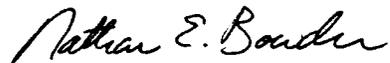
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 149260

Enc: Submitted documents

c: Ms. Julie Galvan
Clear Cause Marketing
1020 NE Loop 410
San Antonio, Texas 78209
(w/o enclosures)

Ms. Monica I. Davis
The Davis Group, Inc.
811 Barton Springs Road
Austin, Texas 78704
(w/o enclosures)

Ms. Karen Purcell
Sherry Mathews Advertising and Public Relations
900 Congress Avenue, Suite 300
Austin, Texas 78701
(w/o enclosures)