



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 10, 2003

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2003-0872

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176186.

The City of Rowlett (the "city"), which you represent, received a request for information relating to the city's request for qualifications ("RFQ") regarding "Architectural & Engineering Services for Two Fire Stations." Specifically, the requestor seeks "copies of the firm names that RFQ's were sent to, copies of proposals submitted and scoring criteria used for evaluating the proposals . . . copies of the firm names invited to interview for the projects, score sheets and notes from the interviews, and scoring criteria used for ranking the various firms." You have submitted a copy of a proposal to this office for review. However, you have not submitted to this office any information relating to the remainder of the request. We therefore assume that you have released this information to the extent that it exists. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000); *see also id.* § 552.221 (requiring governmental body to promptly produce public information). You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of the proposal submitted to this office is truly representative of the requested proposals 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.

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 541 (1990). In this case, you inform us that “[t]o date a number of proposals have been provided to the City and are in the process of being evaluated and scored in order to make recommendation to the City Council. That process has not been completed.” We therefore conclude that the submitted information is bid information excepted from disclosure based on section 552.104 until such time as the contract is awarded. Thus, the submitted information may be withheld from disclosure under section 552.104 until the contract responsive to the RFQ has been awarded and finalized. As we base our ruling on section 552.104, we need not address your remaining argument.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 176186

Enc: Submitted documents

c: Mr. Douglas Edney  
7314 Belmont Road  
Rowlett, Texas 75089  
(w/o enclosures)