



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 24, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2003-1168

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176941.

The Texas Department of Criminal Justice (the "department") received a request for copies of the technical and operational plans portions (excluding budgetary pricing information) of proposals submitted by four vendors in 1998 for the operation of six specified correctional facilities. The requestor subsequently limited his request to such information concerning three of the six facilities. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.104, 552.110 and 552.137 of the Government Code. You also assert that this request implicates the proprietary interests of two private third parties, namely Wackenhut Corrections Corporation ("Wackenhut") and Corrections Corporation of America ("CCA"). You notified these parties of the department's receipt of this request and of their right to submit arguments to this office as to why the requested information relating to them should not be released to the requestor.¹ We have considered the exceptions to disclosure claimed by all parties, including the department, and have reviewed the submitted information.²

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more

¹See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

² Although Wackenhut and CCA responded to the department's section 552.305 notice by sending comments to the department instead of to our office, we received copies of those comments from the department. Accordingly, we have considered those comments as a response to our office under section 552.305 of the Government Code.

favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from 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 disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You state that, based on the bid proposals submitted to the department in 1998, operating contracts were executed with private companies to operate the facilities in question for three years plus applicable extensions. There is now a new round of proposals being prepared by private companies for operation of these same facilities. The requestor seeks the 1998 proposals submitted by CCA for the Bartlett State Jail and Venus Pre-Release Facility and the 1998 proposal submitted by Wackenhut for the Lindsey State Jail. You contend that the release of these proposals would give the requestor a significant advantage in preparing its proposal for this new round of negotiations because the requestor could use the proposals to structure its current proposal based on insight acquired from review of the successful proposals from the 1998 process. Thus, we understand from your representations that the three bid proposals that you have submitted to our office for review constitute the winning 1998 proposals for each of the above-mentioned facilities. Finally, and most importantly, you state that because the current Request for Proposal ("RFP") differs only slightly from the 1998 RFP, it is the department's belief that providing the submitted bid proposals to the requestor would be disadvantageous to the department's bidding process. Based on our review of your arguments and the submitted information, we find in this instance that the department has adequately demonstrated that the release of the submitted 1998 bid proposals would cause potential harm to its interests in the particular ongoing procurement process related to these three facilities. Accordingly, we conclude that the department may withhold the submitted information pursuant to section 552.104 of the Government Code. Because we base our ruling on section 552.104, we need not consider any of the department's or third parties' remaining claimed exceptions to disclosure.

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 176941

Enc. Submitted documents

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