



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2004

Mr. J. Greg Hudson
Thomas Hudson & Nelson, L.L.P.
3305 Northland Drive, Suite 301
Austin, Texas 78731

OR2004-0591

Dear Mr. Hudson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 194973.

The Montgomery County Hospital District (the "district"), which you represent, received a request for a copy of all bids that were submitted for the sale of a specific property.¹ You claim that the requested 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 information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). Moreover, 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 generally does not except bidding information after competitive bidding has concluded and a contract is in effect. *See* Open Records Decision Nos. 541 (1990), 306 (1982), 184 (1978). Here, you inform us that a bid has been tentatively accepted. In the event that the district is unable to

¹The requestor also asked for information regarding the amount still owed on the building. You indicate that this information has been furnished to the requestor.

finalize an agreement with the preferred purchaser, the district would be forced to reevaluate other bids in order to choose another qualified purchaser. You explain that premature disclosure of the information at issue could prevent the district from accepting the most favorable bid. Based on your arguments and our review of the information at issue, we agree that the bid proposals are excepted from disclosure in accordance with section 552.104 of the Government Code until such time as the contract is awarded.²

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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).

²As this determination is dispositive of all information at issue, we do not reach your arguments under section 552.110 of the Government Code.

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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194973

Enc. Submitted documents

cc: Ms. Erika E. Durham
The Courier
100 Avenue A
Conroe, Texas 77301
(w/o enclosures)

Mr. Jay C. Hudgins
8017 Mesa Drive, Suite 102
Austin, Texas 78731
(w/o enclosures)