



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2004

Ms. Leah Curtis Morris
Curtis, Alexander, McCampbell & Morris
P. o. Box 1256
Greenville, Texas 75403-1256

OR2004-1809

Dear Ms. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197484.

The Greenville Electric Utility System ("GEUS"), which you represent, received a request for "bid tabulations from your last bid for gasoline and diesel fuel along with a copy of the awarded vendors bid, and four recent copies of invoices for gasoline and diesel fuel from your current vendor." You state that GEUS has provided the requestor with some of the requested information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.104 of the Government Code. Although you defer to three interested third parties who may have a proprietary interest in the remaining requested information to raise other arguments for withholding that information, you state that this information may be subject to third party confidentiality claims under section 552.110 of the Government Code. Pursuant to section 552.305(d) of the Government Code, GEUS notified the interested third parties, Reeder Distributors, Inc.; Pleasant Oil Company, Inc.; and L. H. Daniel, Inc. of GEUS' receipt of the request and of each company's right to submit arguments to us as to why any portion of the remaining requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government

Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the notified third parties has submitted comments to us explaining why any portion of the information at issue relating to these parties should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the information at issue relating to each of these parties would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that GEUS may not withhold any portion of the information at issue relating to these parties on the basis of any proprietary interest that they may have in the information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.104 of the Government Code. Section 552.104 provides that information is excepted from disclosure if the release of the information would give advantage to a competitor or bidder. *See* Gov't Code § 552.104. The purpose of section 552.104 is to protect the interests of a governmental body, usually in competitive bidding situations. *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 a contract is in effect. *See, e.g.*, Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this instance, you do not inform us that the information at issue pertains to a particular, ongoing competitive situation. Instead, you assert that the "provision of the highlighted information would give [the requestor] an advantage over other bidders and would prohibit GEUS' [sic] from obtaining the advantages of a sealed bid process." Because we find that GEUS has not demonstrated how the release of the information at issue will cause GEUS harm in this instance, we conclude that GEUS may not withhold any portion of the information at issue under section 552.104 of the Government Code. Consequently, GEUS must release all of the information at issue to the requestor.

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).

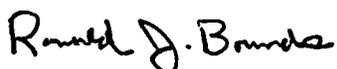
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 197484

Enc. Submitted documents

c: Ms. Diane Durnell
Contract Sales
Petroleum Traders Corporation
7110 Point Inverness Way
Fort Wayne, Indiana 46804-7928
(w/o enclosures)

Reeder Distributors, Inc.
P.O. Box 8237
Fort Worth, Texas 76124
(w/o enclosures)

Pleasant Oil Company, Inc.
P.O. Box 1133
Mount Pleasant, Texas 75456
(w/o enclosures)

L. H. Daniel, Inc.
P.O. Box 935
Greenville, Texas 75403
(w/o enclosures)