



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2004

Ms. Lydia L. Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2004-2056

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197791.

The Garland Independent School District (the "district") received two requests for proposals submitted regarding employee assistance program services. The first request sought the proposal of the vendor that was awarded the contract. The second request asked for "the response submitted by the entity which was awarded the contract as well as that of its closest competitor." Although you make no arguments and take no position as to whether the submitted information is excepted from disclosure, pursuant to section 552.305 of the Government Code, you have notified United Behavioral Health ("United") of the request and of its opportunity to submit comments to this office. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). In comments to this office, United contends that its proposal is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that you have submitted only United's proposal for our review. As you have not submitted the other proposal sought by the second requestor, we assume the district has released that proposal to the second requestor to the extent that it existed on the date the

district received this request. If the district has not released that proposal to the second requestor, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We turn now to the submitted proposal and United's arguments. United asserts that its proposal is excepted from disclosure under section 552.104 of the Government Code. This section 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 bidding situations. *See* Open Records Decision No. 592 (1991). This exception is designed to protect the interests of governmental bodies, not third parties. *Id.* Because section 552.104 is designed to protect the interests of governmental bodies and not third parties and the district has chosen not to raise section 552.104 in this instance, none of the submitted information may be withheld on this basis.

United also claims that its proposal is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects the property interests of private persons by excepting from disclosure 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. When raising this exception, the governmental body or interested third party must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

After reviewing United's arguments and the information at issue, we conclude that the company has made a specific factual showing that substantial competitive injury would likely result from disclosure of some of the submitted information. Accordingly, we have marked portions of the submitted information that the district must withhold pursuant to section 552.110(b). However, while United has generally alleged that release of the remainder of the submitted information would cause substantial competitive harm to the company, United has not made a specific factual or evidentiary showing that such harm would result from the release of the information. Therefore, we find that the company has not adequately demonstrated that the remainder of the information at issue is excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 541 at 8 (1990) (general terms of contract with governmental body are usually not excepted from disclosure), 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative); *see also* Open Records Decision Nos. 661 (1999), 319 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor); *cf.* Open Records Decision Nos. 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978).

Consequently, the district may not withhold the remaining submitted information pertaining to United pursuant to section 552.110 of the Government Code and must release it to the requestors.

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).

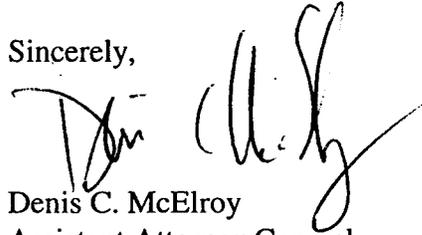
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 197791

Enc. Submitted documents

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