



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2004

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2004-5255

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204170.

The University of Texas System (the "system") received a request for a copy of any and all transcriptions and e-mails sent to or received by a named individual with reference to Los Alamos National Laboratory between November 1, 2003 and the present. The requestor also seeks "itineraries of meetings, events, etc. for [a named individual] during the same time period." You state that you will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.104, 552.111, and 552.137 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." Gov't Code § 552.104(a). 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). 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. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. ORD 541.

In this instance, you state that the present request “focuses on materials related to an upcoming bid for a Department of Energy (‘DOE’) contract to manage and operate the Los Alamos National Laboratory (‘LANL’), which is a two tier competitive process.” You inform us that the DOE will soon open this contract to bidders, and that the system is currently reviewing its options in anticipation of submitting a proposal response. You state that “[i]n order to submit a viable and competitive package, the [s]ystem will partner with an outside vendor(s) in this endeavor.” You explain that the system’s partner vendor will be chosen from a small pool of selected parties. You explain that this process, which is currently pending, constitutes the first level of competitive bidding, and that the chosen vendor and the system “will then ultimately collaborate on a final bid submittal to the DOE in hopes of securing the LANL contract.” Finally, you assert that the release of the enclosed documents would impact the system’s ability to compete in this process fairly because “it would not only disclose [the system’s] vendor pool, but in some cases, the bid strategies and approaches specific to each vendor.” Upon review of your arguments and the submitted information, we conclude that you have demonstrated that public release of the information at issue at this time would cause specific harm to the system’s interests in a particular competitive bidding situation. Thus, we conclude that the submitted information may be withheld pursuant to section 552.104 until such time as a contract has been awarded. Because our ruling is dispositive, we need not address your remaining arguments.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/seg

Ref: ID# 204170

Enc. Submitted documents

c: Mr. John Pruett
P.O. Box 7080
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(w/o enclosures)