



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2004

Mr. C. Brian Cassidy
Locke Liddell & Sapp LLP
100 Congress Avenue Suite 300
Austin, Texas 78701-4042

OR2004-7662

Dear Mr. Cassidy:

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# 209441.

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received a request for information relating to proposed U.S. 183-A funding and environmental analysis. You indicate that the authority will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We note that some of the submitted information does not appear to have been in existence when the authority received this request for information. The Act does not require the authority to release information that did not exist when it received this request or to create responsive information.¹ Thus, the authority need not release information that did not exist when it received this request, and this decision does not address the public availability of such information.

Section 552.104 excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of this

¹See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the authority is in the process of procuring a comprehensive development agreement ("CDA") for the development of the U.S. 183-A turnpike project in Williamson County. You also inform us that the authority is currently in the request-for-detailed-proposals ("RFDP") phase of the CDA procurement process and that no contract for the turnpike project has been awarded. You state that the information that the authority seeks to withhold under section 552.104 would give respondents in the procurement process access to information that might influence their ideas regarding the financing of the project and their offer of a best-value proposal. You assert that the release of the information at issue could harm the authority's ability to obtain competitive proposals by undermining the quality of the responses to the RFDP, the overall competitiveness of the CDA procurement process, and the value of the RFDP responses to the authority. Having considered your arguments, we conclude that you have demonstrated that the submitted information is excepted from disclosure under section 552.104 until such time as a final contract for the turnpike project has been awarded. *See* Open Records Decision No. 541 at 5 (1990).

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

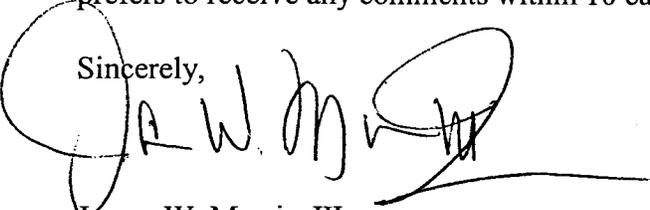
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 209441

Enc: Submitted documents

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(w/o enclosures)