



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2004

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2004-8426

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209561.

The Harris County Community & Economic Development Department (the "department") received a request for "correspondence, economic analysis, incentives offered or requested, proposed or final contracts, deeds of trust, proposed or actual letters of credit and any other document related to Citgo Petroleum relocating its corporate headquarters from Tulsa to Houston." You state that the department does not object to the release of the requested information. However, you state that the Office of the Governor (the "governor's office") objects to release of a specified document which was produced by the governor's office. We have received comments from the governor's office objecting to the release of the submitted information. We have also considered comments submitted by the attorney for the requestor. *See Gov't Code § 552.304* (providing that any individual may submit comments as to why requested information should or should not be released).

Initially, to the extent any additional responsive information to which the governor's office does not object to the release existed on the date the department received this request, we assume it has been released. If you have not released any such records, you 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 under circumstances).

Next, we address the requestor's assertion that the department was not timely in requesting this ruling. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after *receiving* the request. *See* Gov't Code § 552.301(a), (b). The department states, and the requestor also notes, that the department received this request on June 25, 2004. The department also states that "[a]ll Harris County offices were closed on July 5, 2004 in observance of the Independence Day holiday." Accordingly, the tenth business day following the department's receipt of this request was July 12, 2004. The department requested a ruling from this office on July 12, 2004. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find that the department was timely in requesting this ruling.

We now turn to the arguments submitted by the governor's office. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. Open Records Decision No. 593 (1991). In both instances, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. Open Records Decision No. 593 at 2.

After reviewing the governor's arguments and the submitted information, we find that the governor has sufficiently demonstrated the applicability of section 552.104 in this instance. Thus, we conclude the department must withhold the submitted information based on section 552.104 of the Government Code. We note, however, that once agreements have been executed in the competitive situations at issue, the department will be unable to withhold the information on this basis.¹

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

¹Because our ruling is dispositive, we need not address any of the governor's remaining arguments.

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/krl

Ref: ID# 209561

Enc. Submitted documents

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