



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2004

Mr. Robert L. Blumenfeld
Mendel Blumenfeld, LLP
5809 Acacia Circle
El Paso, Texas 79912

OR2004-10628

Dear Mr. Blumenfeld:

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# 214826.

The Upper Rio Grande Workforce Development Board (the "board"), which you represent, received two requests for information relating to a specified request for proposals and other matters. You indicate that some of the information sought by the first requestor does not exist. We note that the Act does not require the board to release information that did not exist when it received this request or to create responsive information.¹ You also indicate that the board is willing to release some of the requested information. You have submitted other information that the board seeks to withhold under sections 552.103 and 552.104 of the Government Code. You also believe that the submitted information implicates the proprietary interests of private parties under section 552.110 of the Government Code. You notified the interested parties of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released.² We

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).

²See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

also received correspondence from ACS State & Local Solutions, Inc. We have considered all of the submitted arguments and have reviewed the submitted 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 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 submitted information relates to an ongoing procurement process and includes responses to the request for proposals and records of the evaluation of the responses. You state that the board has commenced and intends to conduct competitive negotiations with the top two bidders. You also state that, as of the date of your request for this ruling, none of the bidders had been disqualified, and any of them could receive a contract at the conclusion of the competitive negotiation process. You assert that the release of the submitted information at this time would jeopardize the board's bargaining position and could interfere with its ability to negotiate the most advantageous contractual terms and conditions. You have submitted an affidavit in support of your arguments. Based on your representations, the submitted affidavit, and our review of the information in question, we conclude that the board may withhold the submitted information at this time under section 552.104. We note that the board may no longer withhold this information under section 552.104 once the negotiations have been concluded and the contracts have been awarded and are in effect. *See* Open Records Decision No. 541 at 5 (1990).³

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

³As we are able to make this determination, we need not address the board's assertion of section 552.103 or the arguments that we received from ACS.

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

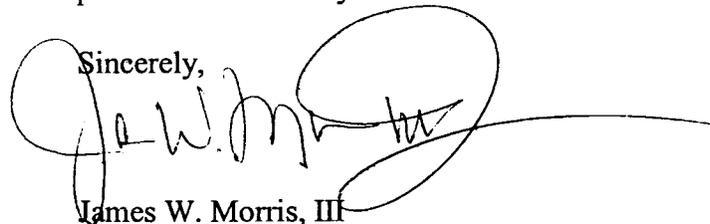
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 214826

Enc: Submitted documents

c: Mr. J. Eduardo Cadena
Cadena Law Firm, P.C.
1017 Montana Avenue
El Paso, Texas 79902-5411
(w/o enclosures)

Mr. Jeff Wright
Policy Studies, Inc.
1899 Wynkoop Street, Suite 300
Denver, Colorado 80202
(w/o enclosures)

Mr. Howard Baldwin
ACS State & Local Solutions, Inc.
515 Congress Avenue, Suite 1400
Austin, Texas 78701
(w/o enclosures)

Mr. Nicki G. Valdez
SERCO of Texas
100 East Royal Lane, Suite 225
Irving, Texas 75039
(w/o enclosures)