



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2005

Ms. Anne Constantine
Legal Counsel
Dallas/Ft. Worth International Airport
P. O. Box 619428
DFW, Airport, Texas 75261-9428

OR2005-03142

Dear Ms. Constantine:

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# 222034.

The Dallas/Ft. Worth International Airport (the "airport") received a request for specific estimate summaries for the years of 2002, 2003, and 2004. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor and his attorney. *See Gov't Code § 552.304* (providing that any person may submit comments stating why information should or should not be released).

Initially the requestor's attorney asserts that the airport failed to comply with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling and notifying the requestor of the request for an opinion from this office. *See Gov't Code § 552.301(b), (e)*. However, the airport states and the documents submitted to this office reflect that the airport received the request for information on January 24, 2005. Further, the airport requested a decision from this office on February 7, 2005, in which the requestor was copied. Consequently, the airport did not fail to request a decision within the ten business day period nor fail to notify the requestor of such request mandated by section 552.301(a) and (d) of the Government Code. Because the request for a decision was timely submitted we will address the airport's arguments against public disclosure.

Section 552.104 of the Government Code 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). 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). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

After reviewing all of the submitted arguments, we find that you have not demonstrated that the airport is engaged in a specific open bidding situation, or otherwise engaged in a particular competitive situation for the purposes of section 552.104. Gov't Code §552.301(e)(1)(A) (requiring a governmental body to explain applicability of exception). Therefore, we determine that section 552.104 does not apply in this instance. Thus, the airport may not withhold the submitted information under section 552.104 of the Government Code. Since you have not claimed any other exceptions to disclosure, the submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 222034

Enc. Submitted documents

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