



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2005

Mr. Russell W. Malm  
Midland County Attorney  
Midland County  
200 W. Wall Street, Suite 104  
Midland, Texas 79701

OR2005-03624

Dear Mr. Malm:

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# 225998.

Midland County (the "county") received a request for the county's "account analysis statement." You claim that the requested 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.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is public unless that information is expressly made confidential under other law. Gov't Code § 552.022(a)(3). The submitted information is from the county's bank account and relates to the expenditure of county funds. Therefore, the information must be released unless it is confidential by law or excepted from disclosure under section 552.104. *See* Gov't Code § 552.104(b) (section 552.022 does not apply to information that is excepted from disclosure under section 552.104). Because you assert that the requested information is excepted from disclosure under section 552.104, we will address your arguments against disclosure.

Section 552.104 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). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. ORD 541. However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You state that the county has an open Invitation to Bid (“invitation”) for banking services. You represent that the information you seek to withhold relates to the current fees the county incurs for banking services, and that this particular information is not included in the invitation. You contend that releasing this information will harm the county’s ability to obtain competitive bids for banking services in the current bidding process and give the requestor an advantage over all other potential bidders. Based upon these representations, we find that the release of the requested information would harm the county’s interests in its current bidding process. Therefore, the county may withhold this information from disclosure under section 552.104 until such time as the new contract for banking services is awarded.

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

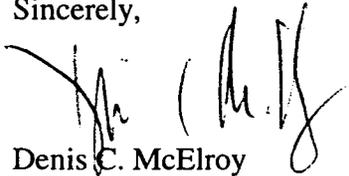
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/JV/krl

Ref: ID# 225998

Enc. Submitted documents

c: Erin M. Davis, CTP  
Bank of America  
Global Treasury Services  
500 West 7<sup>th</sup> Street  
Fort Worth, Texas 76102  
(w/o enclosures)