



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2005

Ms. Josefina J. Brostrom
Assistant County Attorney
El Paso County Hospital District Legal Unit
4815 Alameda, 8th Floor, Suite B
El Paso, Texas 79905

OR2005-05153

Dear Ms. Brostrom:

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# 225949.

The El Paso County Hospital District (the "district") received a request for information relating to its accounting and audit fees for the previous four years. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information may implicate the rights of private parties. You notified Ernst & Young, L.L.C., and Deloitte & Touche, L.L.P., of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception you claim and have reviewed the information you submitted.

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

¹*See* 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). As of the date of this decision, this office has received no correspondence from either Ernst & Young or Deloitte & Touche. *See* Gov't Code § 552.305(d)(2)(B).

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 a request for qualification for auditing services that was sent to various accounting firms, including the requestor's firm. You also state that the selection process has not been concluded. We understand you to assert that the release of the submitted information at this time would interfere with the selection process. Based on your representations, we conclude that the submitted information is excepted from disclosure under section 552.104 of the Government Code until such time as the selection process has concluded and a contract has been awarded. *See* Open Records Decision No. 541 at 5 (1990).

You also ask this office to issue a previous determination that would permit the district to withhold information under section 552.104 of the Government Code without the necessity of again requesting an attorney general decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so. 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).

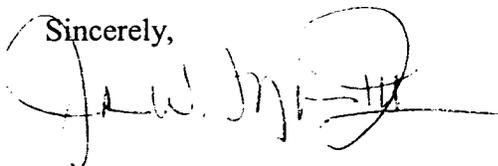
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

JWM/sdk

Ref: ID# 225949

Enc: Submitted documents

c: Mr. Hilton R. Maddox, Jr.
Lauterbach, Borschow & Co.
4130 Rio Bravo Drive, Suite B
El Paso, Texas 79902
(w/o enclosures)