



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2005

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P. O. Box 220
Austin, Texas 78767-0220

OR2005-07090

Dear Mr. Ramirez:

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# 229700.

The Lower Colorado River Authority (the "LCRA") received a request for the proposal submitted by Texas Electric Cooperatives ("TEC") in response to RFP #5496 and LCRA's correspondence on RFP # 5496 from bid date through February 28, 2005. You state that you will release some of the requested information. You claim that some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state that the requested proposal, Exhibit C, may contain proprietary information. Thus, pursuant to section 552.305 of the Government Code, you have notified TEC of the request and of the company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances).* We have considered the submitted argument and reviewed the submitted information.¹

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from TEC explaining how the release of Exhibit C will affect its proprietary interests. Thus, TEC has not demonstrated that Exhibit C is proprietary for purposes of chapter 552 of the Government Code. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990). Accordingly, the LCRA may not withhold Exhibit C on the basis of any proprietary interest that TEC may have in the information. As you claim no other exceptions to disclosure, Exhibit C must be released.

You claim that Exhibit D may be withheld under section 552.104 of the Government Code, which 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 executed. Open Records Decision Nos. 306 (1982), 184 (1978). Section 552.104 does not apply when there is only a single individual or entity seeking a contract, since there are no "competitors" for that contract. *See* Open Records Decision No. 331 (1982).

You state that the documents in Exhibit D concern RFP #5496 contract negotiations and that a contract has not yet been awarded. Specifically, you state that the documents are the internal discussions between LCRA employees regarding negotiation strategies and potential contract provisions that would be incorporated into a contract. Thus, you state that if these documents are released it would weaken LCRA's negotiation position regarding any contract to be awarded. After reviewing Exhibit D and your arguments, we find that you have demonstrated that public release of the information at issue would cause specific harm to LCRA's interests in a particular competitive bidding situation. Accordingly, the LCRA may withhold Exhibit D under section 552.104 of the Government Code.

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# 229700

Enc. Submitted documents

c: Stuart Taylor
Branch Manager
GE Supply
3101 Longhorn Blvd., Ste. 116
Austin, Texas 78758
(w/o enclosures)

Johnny Andrews
Vice President
Texas Electric Cooperatives
100 Cooperative Way
Georgetown, Texas 78626
(w/o enclosures)