



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2005

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1088
Austin, Texas 78767-8845

OR2005-08076

Dear Mr. Norton:

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# 231538.

The City of Austin (the "city") received two requests from the same requestor for information relating to the redevelopment of a city-owned tract of land, including information relating to negotiations with the proposer chosen for redevelopment of the tract. You claim that the requested information is excepted from disclosure under sections 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a bid has been awarded and a contract has been executed. *See id.*

You inform us that the city issued a Request for Proposals regarding the redevelopment of a city-owned tract of land. You state that although a proposal has been selected,

“negotiations [regarding an agreement] are in the early stages, and there is no final contract that is in effect.” You further state that “[i]f negotiations with the proposer do not proceed to a successful conclusion, the [c]ity may enter into negotiations with another proposer or issue another solicitation for proposals.” Accordingly, you argue that if the information at issue is released it would compromise the city’s negotiating position if it were to solicit new proposals or enter into contract negotiations with another proposer. Based on your representations and our review of the submitted information, we find that the city has demonstrated that the release of this information would harm the interests of the city in a particular competitive situation. We therefore conclude that the city may withhold the information at issue in its entirety at this time pursuant to section 552.104 of the Government Code.¹ However, we note that the city may no longer withhold the submitted information under this exception to disclosure once a contract has been executed and is in effect. See Open Records Decision No. 541 at 5 (1990).

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).

¹Because we base our ruling on section 552.104 of the Government Code, we need not address any of your remaining arguments against disclosure.

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 Office of the Attorney General 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jpa

Ref: ID# 231538

Enc. Submitted documents

c: Mr. Ken Altes
c/o Brad Norton
City of Austin Law Dept
P O Box 1088
Austin Tx 78767-8828
(w/o enclosures)