



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2005

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

OR2005-08803

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# 233117.

The City of Austin (the "city") received a request for an agreement between the city and Austin Children's Museum (the "museum") related to the relocation of the museum to a development on city-owned land, commonly known as Block 21, as well as information related to the negotiation of the agreement. You indicate you have released the agreement but claim the submitted 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.<sup>1</sup> We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to

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<sup>1</sup>To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the city is currently engaged in negotiation with the successful bidder for the development of Block 21, Stratus Properties, Inc. ("Stratus"). You explain that this negotiation is in the early stages and no final contract has been agreed upon. You further explain that if negotiation with Stratus does not conclude with a final contract, the city may enter into negotiations with another bidder or issue another request for proposals for the development of Block 21.

You accurately describe the submitted information as communications between city staff, between the city and the museum, and between the city and Stratus regarding the possibility of the museum relocating to the development at Block 21. The requestor's attorney argues that, because the agreement at issue between the city and the museum has already been disclosed, release of the requested information would not harm the city's negotiation with Stratus. However, you inform us, and the remaining submitted information reflects, that the terms and conditions of the relocation of the museum will be the subject of negotiation between the city and Stratus, or the ultimate developer of Block 21.

You claim releasing this information concerning negotiations with Stratus would give an advantage to Stratus or another bidder and would compromise the city's negotiating position in the current negotiation with Stratus, or, if the city were to solicit new proposals or enter into contract negotiations with another bidder, the ultimate developer of Block 21. Based on your representations and our review of the submitted information, we conclude you have established that release of the information at issue would give advantage to Stratus or another bidder for the development of Block 21. Therefore, the submitted information may be withheld under section 552.104.<sup>2</sup>

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

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<sup>2</sup>As our determination of these issues is dispositive, we need not address your remaining arguments against disclosure.

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 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. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 233117

Enc. Submitted documents

c: Ms. Shonda Novak  
Austin American-Statesman  
305 S. Congress  
Austin, Texas 78704  
(w/o enclosures)