



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2005

Mr. Ron M. Pigott
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2005-09387

Dear Mr. Pigott:

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#234329.

The Texas Water Development Board (the "TWDB") received a request for information related to a winning proposal for a contract and the subsequent contract between the winning bidder and the TWDB. You state that the TWDB will release the information related to the bid evaluation and contract award to the requestor. Although you make no arguments and take no position as to whether the remainder of the requested information is excepted from disclosure, pursuant to section 552.305 of the Government Code, you state, and provide documentation showing, that you notified an interested third party, Wells Fargo Bank, of the request and of its right to submit comments to this office.¹

Initially, 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, Wells Fargo Bank has not submitted comments to this office in response to the section 552.305 notice. Therefore, we have no basis to conclude that this company has any proprietary interest in the

¹*See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).*

submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the TWDB may not withhold any portion of the submitted information on the basis of any proprietary interest that Wells Fargo Bank may have in this information. Because you make no arguments as to whether the information is excepted from disclosure and the submitted information is not otherwise confidential by law, the TWDB must release the requested information to the requestor.

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 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/seg

Ref: ID# 234329

Enc. Submitted documents

c: Onvia
Attn: FOIA Request Coordinator
1260 Mercer Street
Seattle, Washington 98109
(w/o enclosures)

Mr. Gregory M. Hasty, Vice President
Ms. Sherri H. Owen, Vice President
Wells Fargo Bank
1445 Ross Avenue, 2nd Floor
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(w/o enclosures)