



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2005

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla - RM 7DN
Dallas, Texas 75201

OR2005-10475

Dear Mr. Toscano:

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# 235486.

The City of Dallas (the "city") received a request for information pertaining to the Dallas Naval Air Station at Hensley Field. You claim that portions of the submitted information are excepted from disclosure under sections 552.104, 552.105, 552.110, and 552.131 of the Government Code. You have submitted arguments in support of these exceptions. Furthermore, you note that Vought Aircraft Industries, Inc. ("Vought") and Ridge Property Trust ("Ridge") may have proprietary interests in Exhibits B, C, D, and F of the submitted information. Although you make no arguments and take no position as to whether this information is excepted from disclosure on this basis, pursuant to section 552.305 of the Government Code, you notified Vought and Ridge of the request and of their opportunity to submit comments to this office. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). Vought informs us that it does not object to the release of Exhibit D, but does submit arguments against the disclosure of Exhibits B, C, G, and H. We have reviewed the submitted representative sample of information and considered the submitted arguments.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 begin with Vought's argument that Exhibits G and H are not responsive to the request. The Act requires a governmental body to release only information that it believes to be responsive to a request. However, in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). The requestor seeks all information pertaining to the Dallas Naval Air Station. We note that the information Vought claims is nonresponsive consists of information relating to Vought's plans to expand and consolidate its operations, which would pertain to the station. Accordingly, we conclude that this information is responsive to the request. We therefore address the claimed exceptions with respect to this information.

The city argues that Exhibit F is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. Open Records Decision No. 541 (1990). The governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. Open Records Decision No. 593 at 2. Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990). You inform us that the requested information pertains to a competitive bidding situation in which a contract has not yet been awarded. You also assert that release of the information would give advantage to competitors. After considering your representations and reviewing the submitted documents, we find that the city may withhold Exhibit F under section 552.104 of the Government Code until such time as a contract has been executed.²

The city argues that Exhibits C, G, H, and I are excepted from disclosure under section 552.131(b) of the Government Code, which states:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). You indicate that Exhibits C, G, H, and I consist of information concerning possible financial or other incentives the city is offering to Vought. The city informs us that the submitted information relates to ongoing negotiations involving the city

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of Exhibit F.

and Vought that have not yet been finalized. Upon review of your arguments and the submitted information, we conclude that the city may withhold Exhibits C, G, H, and I under section 552.131(b).³ We note that the applicability of section 552.131 ends once the city finalizes an agreement with the business prospect. *See* Gov't Code § 552.131(c). We also note that any information that has already been released to the public is not protected by section 552.131. *See* Gov't Code § 552.007(b); Open Records Decision No. 463 at 1-2 (1987) (prohibiting the selective disclosure of information that has been released to the public).

Vought argues that Exhibit B is excepted from disclosure under sections 552.110(b) and 552.131 of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999). Upon review, we determine that Vought has shown that some of the records in Exhibit B consist of commercial or financial information, the disclosure of which would cause substantial competitive harm to Vought. Accordingly, we have marked the information that is excepted from disclosure under section 552.110(b) and must be withheld. However, as for the remainder of the information in Exhibit B, Vought has made conclusory assertions rather than provided a specific factual or evidentiary showing that substantial competitive harm would likely result from release of the information. We therefore determine the remaining information in Exhibit B is not excepted from disclosure under section 552.110(b) of the Government Code.

Vought also raises section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

³Because section 552.131(b) is dispositive, we do not address the city's and Vought's other assertions for these exhibits.

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131(a). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See* Gov't Code § 552.110(a)-(b). Because Vought has not made the specific factual or evidentiary showing required under section 552.110(b) that the release of the information would result in substantial competitive harm, we also conclude that the city may not withhold the remaining information in Exhibit B pursuant to section 552.131(a). Furthermore, we note that section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. Accordingly, we conclude the city may not withhold the remaining information in Exhibit B pursuant to Vought's section 552.131(b) argument.

In summary, you may withhold Exhibit F under section 552.104 and the marked information in Exhibit B under section 552.110 of the Government Code. Also, the city may withhold Exhibits C, G, H, and I under section 552.131(b) to the extent such information has not already been released to the public. The remaining information must be released 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

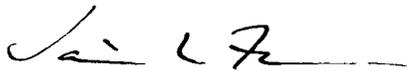
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jpa

Ref: ID# 235486

Enc. Submitted documents

c: Mr. James Clutts
6944 Alexander Drive
Dallas, Texas 75214
(w/o enclosures)