



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2006

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston System
E. Cullen Building, Suite 311
Houston, Texas 77204-2162

OR2006-15071

Dear Mr. Bentley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 267994.

The University of Houston System (the "system") received a request for its 2003-06 natural gas contract and other records relating to the contract. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also assert that the release of the requested information may implicate the proprietary interests of certain interested third parties: Kinder Morgan Texas Pipeline, L.P. ("Kinder Morgan"), CenterPoint Energy Services, Inc., and Gulf Gas Utilities Co. Accordingly, you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that 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 Public Information Act in certain circumstances). We have considered the arguments against disclosure and have reviewed the submitted information.

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463

(1987). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Section 552.104 generally does not except bid information from disclosure once the bidding is over and the contract is executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that in September 2006, the system requested proposals from natural gas suppliers to supply natural gas to the University of Houston campus. Although you acknowledge that the requested contract was executed and now expired, you assert that the release of the contract and the other requested information will harm the system's interests in the current bidding process. Specifically, you describe how a bidder could use information gleaned from the previous contract process to amend its current proposal to the disadvantage of the system. After reviewing your arguments and the submitted information, we conclude that the system may withhold the requested information pursuant to section 552.104 of the Government Code.¹

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).

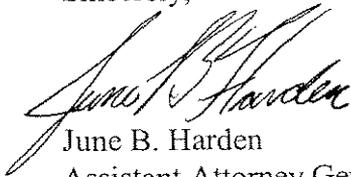
¹Because our ruling under section 552.104 is dispositive, we need not address Kinder Morgan's arguments against disclosure.

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); *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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 267994

Enc: Submitted documents

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