



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2006

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P. O. Box 9960
College Station, Texas 77842

OR2006-00417

Dear Ms. DeLuca:

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# 240531.

The City of College Station (the "city") received a request for the presentation and key specifications delivered to the College Station City Council. You state that you have released a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code.¹ Additionally, you state that the requested key specifications may contain proprietary information. Accordingly, you inform us, and provide documentation showing, that you notified third parties First National Bank, Community Bank, Citibank, and Wells Fargo of the requests 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 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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain

¹Although you raise sections 552.101 and 552.107 of the Government Code, you have provided no arguments regarding these exceptions. We therefore assume you are no longer claiming these exceptions. *See* Gov't Code § 552.301.

applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments 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. The purpose of this section 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. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the city council has "directed [the city] to contract with Citibank for the [c]ity's bank depository services." You further explain that, as of the date of the city's receipt of this request for information, that the city "is in the process of finalizing a contract with Citibank" and that the "contract will not be finalized. . .until the Mayor signs the contract." You also assert that release of the information would give advantage to competitors. After considering your representations and reviewing the information at issue, we conclude that the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 240531

Enc. Submitted documents

c: Ms. Melisa Atkinson
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(w/o enclosures)