



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2006

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P. O. Box 619428
DFW Airport, Texas 75261-9428

OR2006-04184

Dear Ms. Constantine:

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# 247352.

The Dallas-Fort Worth International Airport Board (the "board") received a request for the winning proposal and subsequent contract related to a specific project number. Although you claim no exceptions to disclosure, you assert that release of the submitted information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you notified JPMorgan Chase ("Chase") of the request and of its 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). We have considered the arguments and reviewed the submitted information.

Initially, we note that the board submitted as responsive to this request only the requested contract, and states that it has released a redacted version of the contract as well as the requested proposal. Chase seeks to withhold a "Bid Sheet" containing pricing information that was not submitted to this office for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the board. *See Gov't Code*

§ 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Chase responded to the section 552.305 notice by asserting that information in their proposal regarding the names and contact information of references is confidential under section 552.101 of the Government Code.¹ Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, as well as the doctrine of common law privacy. Chase has not cited to a statute, nor are we aware of one, that makes the information at issue confidential. *See generally* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Additionally Chase argues that the listed references “have an expectation of privacy[.]” However, we note that common law privacy protects the interests of individuals, not those of corporations and other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Further, we do not find the reference information to be intimate or embarrassing. Therefore, none of the submitted information may be withheld under section 552.101.

Chase also claims that its reference information should be withheld 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.” Gov’t Code § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the board does not seek to withhold any information pursuant to section 552.104, none of the submitted information may be withheld pursuant to section 552.104 of the Government Code. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104). As Chase claims no other exceptions to disclosure, the submitted information must be released.

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.

¹We note that this information is contained in the submitted contract.

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*, 342 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 247352

Enc. Submitted documents

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