



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2006

Ms. Wendy E. Ogden
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-04639

Dear Ms. Ogden:

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# 248460.

The City of Corpus Christi (the "city") received a request for information related to proposals submitted in response to Bid No. BI-0019-06: Public Safety Systems Replacement Project. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You further state that you have notified Intergraph Corporation, CompuDyne-Public Safety & Justice, Inc., and Northrop Grumman Information Technology, Inc. of their right to submit arguments as to why the requested information should not be released. *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 in Act in certain circumstances). We have received comments from Intergraph. We have considered all of the submitted arguments and reviewed the submitted information.

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 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 state that the requested information pertains to a competitive bidding situation in which a contract has not yet been awarded. You also inform us that the city is “still gathering information and negotiating” in regards to this bid proposal. After considering your representations and reviewing the submitted documents, we find 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.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).

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

¹As our ruling is dispositive, we need not address the remaining arguments.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eb

Ref: ID# 248460

Enc. Submitted documents

c: Mr. Spencer Anderson
Motorola Corporation
11979 South Jandice Drive
Riverton, Utah 84065
(w/o enclosures)

Intergraph Corporation
ATTN: Alice Dilbeck, VP, Public Safety & Government
P.O. Box 6695
Huntsville, Alabama 35824
(w/o enclosures)

CompuDyne- Public Safety & Justice, Inc.
ATTN: Daniel A. Crawford, President/ CEO
39350 Civic Center Drive
Fremont, California 94538
(w/o enclosures)

Northrop Grumman Information Technology, Inc.
ATTN: John C. Kouri, Contracts Manager
12005 Sunrise Valley Drive
Reston, Virginia 20191
(w/o enclosures)