



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2006

Mr. Charles R. Anderson
Deputy City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2006-05130

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 249710.

The City of Irving (the "city") received two requests for information pertaining to the city's and the University of Dallas' (the "university") bid for the proposed George W. Bush Presidential Library. The city has released some of the information and claims the remaining information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. Pursuant to section 552.305 of the Government Code, the city notified the university of the request and of its right to submit arguments to this office as to why the information should not be released. 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 Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). We have considered the city's and the university's claimed exceptions to disclosure and have reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. We have concluded that when a governmental body demonstrates that it has specific marketplace interests, it must be

afforded the right to claim the “competitive advantage” aspect of section 552.104. Open Records Decision No. 593 at 4 (1991). Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

The city explains it and the university are competing with two other finalists to be the site for the presidential library. Furthermore, the city asserts that considerable effort and funds were expended to prepare the proposal, and disclosure of the information to its competitors would allow those competitors to refine their own proposals to the detriment of the city. Based on the arguments presented, we conclude that you have established that the city has legitimate marketplace interests for the purposes of section 552.104. We also find that the city has shown the possibility of specific harm if the submitted information is released prior to the close of competition. Thus, the city may withhold the information it has marked under section 552.104. We note, however, that, as the city has stated, the city may not withhold the information under section 552.104 once competition has concluded and the decision is made. Because section 552.104 is dispositive, we do not address the other arguments.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

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Enc: Submitted documents

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