



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2006

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2006-05840

Dear Ms. Alexander:

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# 250784.

The Texas Department of Transportation (the "department") received a request for information pertaining to eight specified projects. We indicate that some of the requested information will be released to the requestor. You also state that some of the requested information is also published on the Internet, and you will inform the requestor of the relevant website addresses.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, and 552.111 of the Government Code. Further, you state that the requested information may be subject to third party proprietary interests. You state, and provide documentation demonstrating that, pursuant to section 552.305 of the Government Code, you notified Zachry American Infrastructure ("Zachry") and Macquarie 1604 Partnership, L.P. ("Macquarie") of the request and of their 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

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<sup>1</sup>We note that the department must make available for inspection or provide copies of this information, unless the requestor agrees to accept the department's reference to the website addresses as fulfillment of his request for this particular information. *See* Open Records Decision No. 682 (2005).

considered all submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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 the governmental body's interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 592 (1991). Furthermore, this section 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 submitted information pertains to a competitive bidding situation in which a contract has not yet been awarded. You also assert that release of the submitted information would undermine the department's interest in competitive bids. After considering your representations and reviewing the submitted documents, we find that the department may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. As our ruling on this issue is dispositive, we need not address the remaining 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

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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,

  
L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 250784

Enc. Submitted documents

c: Mr. Dan Gildor  
Save Our Springs Alliance  
P.O. Box 684881  
Austin, Texas 78768  
(w/o enclosures)

Mr. Christopher Voyce  
Project Manager  
The Alamo Roads Group  
125 West 55<sup>th</sup> Street  
New York, New York 10019  
(w/o enclosures)

Mr. G. Stewart Whitehead  
Winstead, Sechrest & Minick, P.C.  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(w/o enclosures)