



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2006

Ms. Carol Longoria  
Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2006-08688

Dear Ms. Longoria:

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# 256091.

The University of Texas at Austin (the "university") received a request for copies of the proposals submitted in response to RFP-telefundraising dated June 3, 2005. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you claim that this information may be subject to the proprietary interests of Wilson-Bennet, Inc., RuffaloCody, LLC, and IDC Ltd. You inform us that you notified these companies 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 considered the submitted arguments and reviewed the submitted proposals.

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(a). 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). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. *See id.* However, this office has determined that in some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5.

In this instance, you explain that the university is currently in the process of awarding a new contract for the identical services solicited by the RFP implicated by this request. You state that negotiations for telefundraising services are currently ongoing and the university has not finalized a contract for this current RFP. You assert that due to the similarity of the current RFP to the previous RFP that was requested, "public release of the vendor submittals responsive to the 2005 RFP would compromise the current 2006 RFP process giving one company a distinct competitive advantage over the others, and over the University." Upon review of your arguments and the submitted information, we conclude that you have demonstrated that public release of the information at issue would cause specific harm to the university's interests in a particular competitive bidding situation. Thus, we conclude that the submitted information may be withheld pursuant to section 552.104 until such time as a new contract has been awarded.<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we need not consider the arguments of RuffaloCody, LLC.

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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/ir

Ref: ID# 256091

Enc. Submitted documents

c: Mr. Vance Van Wey  
3101 Wells Branch Pkwy, #1526  
Austin, Texas 78728  
(w/o enclosures)

Mr. Todd Smith, President  
Wilson-Bennet, Inc.  
109 E. Center Street  
Searcy, Arkansas 72143  
(w/o enclosures)

Mr. Stan Campbell, CFRE  
Senior Vice President & Senior Consultant  
RuffaloCody, LLC  
65 Kirkwood North Rd., SW  
Cedar Rapids, IA 52404  
(w/o enclosures)

Mr. Bradley S. Carlson Executive Vice President  
IDC, Ltd.  
2500 Paseo Verde Pkwy.  
Henderson, Nevada 89074  
(w/o enclosures)