



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 9, 2007

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2007-03915

Dear Ms. Jimenez:

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# 275209.

The County of Nueces (the "county") received a request for the contract executed pursuant to the Regional Fairgrounds Project, RFP No. 2623-05, all approved change orders and amendments to said contract, all monthly pay requests or pay applications under said contract, and all checks reflecting payment by the county to a specified third party. You state that you have released a portion of the requested information. You argue that a portion of the submitted information is excepted from disclosure pursuant to section 552.136 of the Government Code. Although you take no position on the proprietary nature of the remaining information, you state and provide documentation showing that you have notified an interested third party, Zachry Construction Corporation ("Zachry") of the request and of its opportunity to submit comments to this office as to why the remaining requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* 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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information as well as the submitted arguments. We have also considered

comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note that the requestor has agreed to the redaction of account numbers confidential under section 552.136 of the Government Code. Accordingly, any account numbers within the submitted documents are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the county is not required to release that information in response to the request.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). Zachry has submitted arguments asking our office to continue to rely on Open Records Letter No. 2006-06293 (2006), in which we held that portions of Zachry's proposal submitted in response to the Regional Fairgrounds Project RFP were confidential under section 552.110 of the Government Code. However, we note that the present request seeks the contract executed pursuant to the Regional Fairgrounds Project, all approved change orders and amendments to said contract, all monthly pay requests or pay applications under said contract, and all checks reflecting payment by the county to Zachry. The proposal, which was at issue in Open Records Letter No. 2006-06293, is not responsive to the present request. Accordingly, this ruling does not address that information and is limited to the information submitted as responsive by the county. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Consequently, we do not address Zachry's arguments concerning information that was not submitted. Furthermore, because Zachry has not submitted any arguments against the disclosure of the responsive information, we have no basis to conclude that release of any portion of the responsive information would implicate Zachry's proprietary interests. *See, e.g.,* Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause the party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Thus, 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.

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,

A handwritten signature in cursive script that reads "Jordan Johnson".

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/krl

Ref: ID# 275209

Enc. Submitted documents

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