



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2007

Mr. Matthew C.G. Boyle
Assistant City Attorney
Boyle & Lowry, L.L.P.
City of Farmers Branch
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2007-04502

Dear Mr. Boyle:

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# 276529.

The Dallas County Utility and Reclamation District (the "district"), which you represent, received a request for information pertaining to a specified RFP. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code, Texas Disciplinary Rule of Professional Conduct 1.05, and Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

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 exception is to protect a governmental body's interests in competitive bidding

¹Although you raise section 552.101 of the Government Code, we note that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002).

²We assume 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.

situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978). When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the “competitive advantage” aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. *See* Open Records Decision No. 593 at 4 (1991) (governmental body that has been granted specific authority to compete in the private marketplace may demonstrate marketplace interests analogous to those of a private entity). Second, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See id.* at 2. 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.

You assert that the district is a legitimate marketplace participant in the conveyance of district-owned real property and mineral rights. You inform us that the district is “currently engaged in negotiations for its mineral rights with at least three different entities” and that “release of the information submitted herewith would harm these negotiations and the [d]istrict’s potential efforts with any of the entities listed therein.” Based on these representations, we find that you have demonstrated that the district has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. *See* Open Records Decision No. 593 (1991).

You inform us that the submitted documents reveal the “various terms and conditions of the submittals received to date by the [d]istrict.” You argue that with the submitted information, “other similarly situated sellers and/or purchasers of such mineral interests would be able to exploit the information to their benefit and the [d]istrict’s detriment.” Based on the submitted representations and arguments, we conclude that the district has shown that release of the submitted information would cause specific harm to the district’s marketplace interests. *Id.* We therefore conclude that the district may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jb

Ref: ID# 276529

Enc. Submitted documents

c: Ms. Suzan Kedron
c/o Mr. Matthew C.G. Boyle
Assistant City Attorney
Boyle & Lowry, L.L.P.
City of Farmers Branch
4201 Wingren, Suite 108
Irving, Texas 75062-2763
(w/o enclosures)