



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2007

Mr. Matthew D. de Ferranti
Bovey & Bojorquez, LLP
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2007-12793

Dear Mr. de Ferranti:

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# 290703.

The City of Brady (the "city"), which you represent, received a request for the depository bid from Brady National Bank effective September 2005. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 excepts from 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 a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate 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 generally does not except information relating to competitive bidding after a contract has been awarded and executed. *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.

The city informs this office that it has recently “gone out for bid for depository banking services for the 2007-2008 fiscal year.” The city indicates, and the submitted information reflects, that the 2005 bid information relates to the city’s current interest, investment, loan rates, and securities services. It states that it is currently seeking the same services and that disclosure of the submitted information could undermine the city’s ability to obtain the lowest possible bid by disclosing information regarding the current services that the city receives. Upon review of your arguments and the submitted information, we conclude that you have demonstrated that public release of the submitted information would cause specific harm to the city’s interests in a particular competitive bidding situation. Thus, we determine that the submitted information may be withheld pursuant to section 552.104 of the Government Code until such time as a new contract has been executed.¹

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).

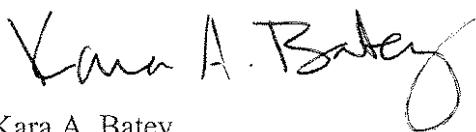
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹As our ruling is dispositive, we need not consider the city’s assertion of section 552.110.

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 black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looped "y" at the end.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 290703

Enc. Submitted documents

c: Mr. Mike Rogers
Comercial National Bank
P. O. Box 591
Brandy, Texas 76825-0591
(w/o enclosures)