



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2007

Ms. Debra G. Rosenberg  
Atlas & Hall, L.L.P.  
P.O. Box 3725  
McAllen, Texas 78502-3725

OR2007-13284

Dear Ms. Rosenberg:

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# 292365.

Hidalgo County (the "county"), which you represent, received a request for the highest-ranking provider's response to a request for proposals for emergency ambulance services. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You also believe that this request for information may implicate the interests of Pro Medic EMS LLC ("Pro Medic"). You state that Pro Medic was notified of the request and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> We have considered the exception you claim and have reviewed the information you submitted.

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). This exception protects a governmental body's interests in competitive bidding 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 once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). As of the date of this decision, we have received no correspondence from Pro Medic.

You state that the county is currently negotiating a contract with Pro Medic. You contend that should the agreement not be completed, release of Pro Medic's proposal would place the county at a competitive disadvantage in negotiating with the next highest-ranked provider or in securing other bidders. Based on your representations, we conclude that the submitted information is excepted from disclosure at this time under section 552.104 of the Government Code. We note that the county may no longer withhold the information on this basis once a related contract has been executed and is in effect.

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).

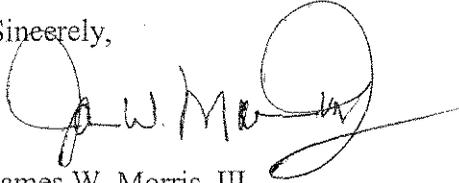
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/eb

Ref: ID# 292365

Enc: Submitted documents

c: Mr. Harvey Reyes  
Med-Care EMS, Inc.  
P.O. Box 6767  
McAllen, Texas 78502  
(w/o enclosures)

Pro Medic EMS LLC  
c/o Ms. Debra G. Rosenberg  
Atlas & Hall, L.L.P.  
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