



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2007

Ms. Stacey M. Poteete  
Administrative Assistant  
Walker County Appraisal District  
P.O. Box 1798  
Huntsville, Texas 77342-1798

OR2007-13715

Dear Ms. Poteete:

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# 293611.

The Walker County Appraisal District (the "district") received two requests for copies of the competing bids submitted to the district for the 2007-2009 depository contract. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also indicate that release of the requested information may implicate the proprietary interest of third parties. Pursuant to section 552.305 of the Government Code, you are required to notify interested third parties of the request and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d)*. You indicate that you have notified First State Bank and First National Bank of Huntsville ("First National") of the requests and of their rights to submit arguments to this office. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990)* (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim.

Initially, we must address the district's procedural obligations. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples,

labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D).

In this instance, the documents reflect the district received the requests for information on August 23, 2007 and August 24, 2007. Accordingly, you were required to submit the items enumerated under section 552.301(e) to us no later than September 13, 2007 for the first request and September 14, 2007 for the second request. However, as the date of this letter, you have not submitted a copy of the requested information to our office. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301 in requesting a decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.104 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 at 8 (1991) (statutory predecessor to section 552.104 subject to waiver). Accordingly, the district has waived its claim under section 552.104. Further, because you have not submitted the information the district seeks to withhold, we have no basis for finding it confidential. Therefore, we have no choice but to order you to release the requested information. If you believe that the information at issue is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.<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

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<sup>1</sup>We note that First National objects to the release of its information. However, the argument submitted by First National is conclusory and therefore insufficient to establish a claim under section 552.110 of the Government Code. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 293611

Enc. Submitted documents

c: Mr. James Baines  
First State Bank  
P.O. Box 478  
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(w/o enclosures)

Ms. Stephanie McGee  
First National Bank of Huntsville  
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