



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 1, 2008

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2008-01508

Dear Mr. Johnson:

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# 301118.

The City of Waco (the "city") received two requests from the same requestor for information pertaining to the evaluations and evaluation committee for the city's copier contract. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that one of the requests seeks the copier background of each of the evaluation committee members. You have failed to submit this information to our office. Thus, to the extent any information responsive to this portion of the request existed on the date the city received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No.463

(1987). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Section 552.104 generally does not except bid information from disclosure once the bidding is over and the contract is executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information relates to a proposed contract for copiers. You also state that the proposed contract has not been awarded. You further assert that the release of the submitted information would harm the city's negotiating interests with respect to potential vendors and compromise the bidding process. Based on your representations, we conclude that the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). Because our determination on this issue is dispositive, we need not address your remaining argument.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

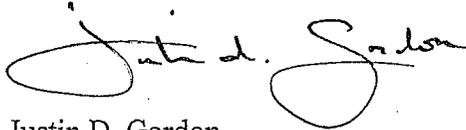
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 "Justin D. Gordon". The signature is written in dark ink and is positioned above the typed name and title.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 301118

Enc. Submitted documents

c: Mr. Brad Record
CTWP
3730 Franklin Avenue
Waco, Texas 76710
(w/o enclosures)