



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2008

Mr. Fred A. Stormer
Underwood, Wilson, Berry, Stein, & Johnson, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2008-03536

Dear Mr. Stormer:

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# 308700.

The Memphis Independent School District (the "district"), which you represent, received a request for all bids submitted for a specified project as well as information indicating how the district selected the winning bidder. You state that all requested information other than the bids themselves have been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also believe that the submitted information implicates the proprietary interests of third parties under section 552.110 of the Government Code. You provided documentation showing that the district notified Synetra and ComData Solutions of this request for information and each company's right to submit arguments to this office as to why the submitted information should not be released.¹ We have considered the exception you claim and reviewed the submitted information.

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). The

¹ 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).

purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Moreover, 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). Generally, section 552.104 does not except information relating to competitive bidding situations once a bid has been awarded and a contract has been executed. *See id.*

You inform us that the district issued a request for equipment and services regarding an improvement project for E-Rate eligible computer equipment and a voice over IP phone system. You state that although the Synetra proposal has been selected, no contract has been executed, and likely will not be executed until E-Rate funding is awarded to the district and the district's Board of Trustees indicates its approval. You further state that "the District could refuse to approve the contract with Synetra and proceed to the next highest ranked bidder, or start over and seek new bids." Accordingly, you argue that if the information at issue is released it would compromise the district's negotiating position if it were to solicit new proposals or enter into contract negotiations with another proposer. Based on your representations and our review of the submitted information, we find that the district has demonstrated that the release of this information would harm the interests of the district in a particular competitive situation. We therefore conclude that the district may withhold the information at issue in its entirety at this time pursuant to section 552.104 of the Government Code. However, we note that the district may no longer withhold the submitted information under this exception to disclosure once a contract has been executed and is in effect. *See* Open Records Decision No. 541 at 5 (1990).

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

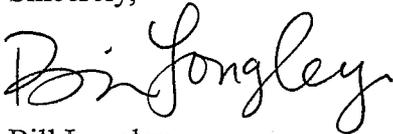
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/sdk

Ref: ID# 308700

Enc. Submitted documents

c: Mr. Ray Mendiola
Advanced Wiring, LLC
P.O. Box 7926
Amarillo, Texas 79114
(w/o enclosures)

Mr. Dennis Carver
Synetra
3223 South Loop 289, Suite 580
Lubbock, Texas 79423
(w/o enclosures)

Mr. Dennis Keumpel
ComData Solutions
801 South Fillmore Street, Suite 410
Amarillo, Texas 79101
(w/o enclosures)