



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2008

Ms. Holly C. Lytle  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2008-05136

Dear Ms. Lytle:

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# 307982.

El Paso County (the "county") received a request for copies of the winning bid submitted in response to a specified Request for Proposals and for information pertaining to the county's selection committee's decision in choosing the winning bid. You indicate that you are releasing information regarding the county's selection committee's decision to the requestor. With regards to the actual bid, you raise sections 552.101 and 552.110 on behalf of the winning bidder, Butterworth and Macias, P.C. ("Butterworth"), but make no arguments on its behalf. Accordingly, you inform us that you notified Butterworth of this request for information and of its right to submit its own arguments to this office as to why the submitted bid should not be released. *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). We have received and considered comments from Butterworth, and we have reviewed the submitted bid.

Although Butterworth raises no specific exceptions to the Act, it requests that portions of its bid "remain confidential." Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. It appears that Butterworth claims that

portions of its bid may be excepted from disclosure under section 552.101. However, Butterworth has not directed our attention to any law, nor are we aware of any, under which any of the information in question is considered confidential for purposes of section 552.101. Furthermore, we note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”); 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Therefore, the county may not withhold any portion of the winning bid on the basis of section 552.101 of the Government Code. As no other arguments are made, the bid must be released to the requestor.

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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 307982

Enc. Submitted documents

c: Ms. Varonia Walker  
Sales Support Specialist  
FMBC Premier Benefits Solutions  
3101 Sessions Road  
Tallahassee, Florida 32303  
(w/o enclosures)

Ms. Melissa L. Macias, C.P.A.  
Butterworth & Macias, P.C.  
Terrace Gardens Office Park  
600 Sunland Park Drive  
Building Two, Suite 300  
El Paso, Texas 79912  
(w/o enclosures)