



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2008

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
Legal Department
1900 Main, 3rd Floor
P.O. Box 61429
Houston, Texas 77208

OR2008-09052

Dear Ms. Alexander:

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# 314777.

The Metropolitan Transit Authority of Harris County ("METRO") received a request for the most recent proposal submitted by Washington Group Transit Management Group ("WGTMG") related to a specific project. You claim that the submitted pricing proposal is excepted from disclosure under sections 552.103, 552.104, 552.106, and 552.111 of the Government Code. You also state that release of the submitted proposal may implicate the proprietary interests of WGTMG. Accordingly, you have notified WGTMG of the request and of the company's right to submit arguments to this office as to why the submitted proposal documents should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim along with comments submitted by WGTMG, and reviewed the submitted information.

You seek to withhold the submitted pricing proposal under section 552.104, which protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations

where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state that WGTMG, whose pricing proposal is at issue, is one of three companies selected as being qualified to bid on the project on which the proposal is based. You also state that the bidding is not complete and a contract has not been awarded. Furthermore, you state that if METRO is not satisfied with WGTMG's proposal, then METRO can seek proposals from the other qualified companies. You assert that the release of WGTMG's pricing proposal would "put another [company] at a competitive advantage because it could then base its proposal on [WGTMG's] proposal" and that "[s]uch a public disclosure would harm METRO's bargaining position." Based on your representations, we conclude that METRO may withhold the submitted pricing proposal under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure or WGTMG's arguments against disclosure.

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). If the governmental body does not file suit over 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).

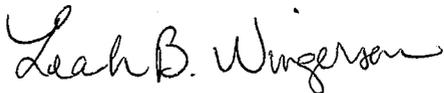
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 314777

Enc. Submitted documents

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