



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2008

Ms. Elizabeth Garza Goins
Assistant General Counsel
Office of the General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-09973

Dear Ms. Goins:

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# 319163.

The Texas Department of Public Safety (the "department") received two requests for any and all bids for the cancelled Request for Proposal ("RFP") titled "Virtual Border Neighborhood Watch Services in support of the Governor's Division of Emergency Management." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. In addition, you assert that the release of the requested information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you notified Argon ST, Inc. ("Argon"), Blue Servo ("Blue"), BT-INS, Cytech Software Systems, Inc. ("Cytech"), Northrop Grumman Mission Systems ("Northrop"), PrismNet Ltd. ("PrismNet"), and Rioplex Wireless, Ltd. ("Rioplex") of the requests and of their opportunity to submit comments to this office. *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 applicability of exception to disclosure in certain circumstances). We have received arguments from Argon and Cytech. We have considered the exceptions you claim and reviewed the submitted information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that the requested information is excepted from disclosure based on section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The 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. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the RFP in question was cancelled, but that according to Department Chief Jack Colley of the Governor's Division of Emergency Management, the RFP "will be resolicited within 6 to 12 months with substantially similar specifications and requirements as those in the canceled solicitation document." You assert that release of the requested information "will compromise the department's ability to negotiate and receive a fair contract on the resolicitation" because "[o]nce the substantially similar solicitation is reposted, vendors will submit pricing and proposals very similar to the ones already received." Therefore, you assert that releasing the responses to the RFP would result in an proposals thereby putting the department at a competitive disadvantage. Upon review, we therefore conclude that the requested information is excepted from disclosure based on section 552.104 until such time as the contract is awarded. In light of our conclusion under section 552.104, we need not address the other exceptions raised.

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

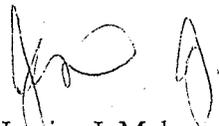
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 319163

Enc. Submitted documents

c: Ms. Brandi Grissom
Capitol Reporter
El Paso Times
1005 Congress Avenue, Suite 300
Austin, Texas 78701
(w/o enclosures)

Mr. Kevin Ramsey
1317 Kendlewood
McAllen, Texas 78501
(w/o enclosures)

Mr. Othal E. Brand, Jr.
Rioplex Wireless, Ltd.
P.O. Box 4408
McAllen, Texas 78502
(w/o enclosures)

Mr. Ben Orlando
Northrop Grumman Mission Systems
201 Electronics Boulevard
Huntsville, Alabama 35824
(w/o enclosures)

Ms. Kim Cox
BT-INS
1900 St. James Place, Suite 450
Houston, Texas 77056
(w/o enclosures)

Mr. Ivan Mills
5545 Fredericksburg Road, Suite 240
San Antonio, Texas 78229-3574
(w/o enclosures)

Mr. Stephen Hatfield
PrismNet Ltd.
11500 Metric Boulevard, Suite 280
Austin, Texas 78758
(w/o enclosures)

Mr. Oscar DeLeon
Cytec Software Systems, Inc.
1017 William D. Tate Avenue, Suite 107
Grapevine, Texas 76051
(w/o enclosures)

R. Harris
Blue Servo
1221 Merit Drive, Suite 400
Dallas, Texas 75251
(w/o enclosures)