



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2008

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2008-10270

Dear Mr. Toscano:

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# 317115.

The City of Dallas (the "city") received a request for the proposals of the companies no longer in consideration for the Dallas Convention Center Hotel project. You claim that the submitted proposals are excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code. You also claim that the information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified Jones Lang LaSalle ("Jones") and Hines/Garfield Traub ("Hines") of the city's receipt of the request for information and of the companies' right to submit arguments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold the submitted project proposals 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 Jones and Hines are two of six companies selected as being qualified to bid on the project on which the proposals are based. You also state that the bidding is not complete, further proposal information is expected from the companies being considered for the project, and a contract has not been awarded. Although you acknowledge that Jones and Hines are no longer being considered for the project, you assert that release of their proposals could give the remaining companies an advantage by allowing them to "propose during subsequent submissions and negotiations additional terms not originally submitted." You further assert that the release of the proposals would impair the city's negotiation position if the city "decides to use portions of the Hines and/or Jones initial proposals in the city's further negotiations with the other four proposers." Based on your representations, we conclude that the city may withhold the submitted project proposals under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining 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,

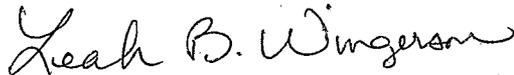
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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# 317115

Enc. Submitted documents

c: Mr. Dave Levinthal
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)