



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2008

Mr. Eric D. Bentley
Assistant General Counsel
University of Houston
311 East Cullen Building
Houston, Texas 77204-2028

OR2008-10562

Dear Mr. Bentley:

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#322360.

The University of Houston (the "university") received a request for copies of the competitive proposals submitted in response to a specific Request for Proposals for banking services. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state that the request may implicate the proprietary interests of third parties. Pursuant to section 552.305(d) of the Government Code, you have notified the interested third parties of the request and of their opportunity to submit comments to this office as to why this information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have considered the argument asserted and reviewed the submitted representative sample of information.¹

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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).

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.

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 university issued a Request for Proposals regarding banking services. You state that the university is "currently engaged in negotiations" to finalize conditions, and no contract is in effect. You further assert that because negotiations are pending, there can be no guarantee that a final contract for banking services will be executed. Accordingly, you argue that if current negotiations "break down," the release of the requested information could improve the competitive opportunity of bidders at the university's expense. Based on your representations and our review of the submitted information, we find that the university has demonstrated that the release of this information would harm the interests of the university in a particular competitive situation. We therefore conclude that the university 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 university may no longer withhold the requested 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). 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#322360

Enc. Submitted documents

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