



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2008-10701

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# 318088.

The Texas Department of Transportation (the "department") received a request for scoring sheets pertaining to proposals submitted to the department in response to a specified request for proposals. Although you raise no exceptions to disclosure on behalf of the department, you contend that the submitted information may contain proprietary information subject to exception under section 552.110 of the Government Code. Accordingly, you notified the interested third parties of the request and of their right to submit arguments to this office explaining why this information should not be released.¹ *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received correspondence from Milner and LopezGarcia, stating that they do not object to release of their information. Mead and Hardy have submitted arguments objecting to release of their information. We have considered the submitted arguments and the information at issue.

¹The notified third parties are: Halff Associates, Inc.; Michael Baker, Inc.; Hardy-Heck-Moore, Inc. ("Hardy"); Chiang, Patel & Yerby, Inc.; Mead & Hunt ("Meade"), Inc.; Wiss, Janney, Elstner Associates, Inc.; SWCA Environmental Consultants, Inc.; John Milner Associates, Inc. ("Milner"); LopezGarcia Group, Inc. ("LopezGarcia"); and PBS&J.

We note that an interested third party is allowed ten business days from the date of its receipt of a governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, only Milner, LopezGarcia, Mead, and Hardy have corresponded with this office. Thus, because the other interested parties have not demonstrated that they have a proprietary interest in their proposals, the department must release their proposals. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Mead and Hardy object to release of their rate sheets under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Both Mead and Hardy assert that their rate sheets constitute commercial or financial information which if released would cause their companies substantial harm. However, we note that both Mead and Hardy were selected as winning bidders with respect to the proposal at issue. Pricing information of a winning bidder, such as Mead and Hardy in this instance, is generally not excepted under section 552.110(b). This office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (public has interest in knowing prices charged by government contractors). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). We therefore conclude that the department may not withhold any portion of Mead or Hardy's rate sheets under section 552.110(b) of the Government Code. *See* Open Record Decision Nos. 661 at 5-6 (business entity must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). As no other exception to disclosure is raised for this information, it 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).

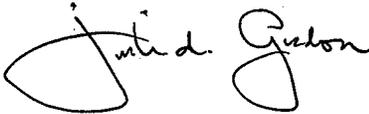
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink that reads "Justin D. Gordon". The signature is written in a cursive style with a large, looped initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 318088

Enc. Submitted documents

c: Ms. Amy Dase
Prewitt and Associates, Inc.
2105 Donley Drive, Suite 400
Austin, Texas 78751
(w/o enclosures)

Mr. Leonard R. Voelinger, AICP, RPA
Project Manager
Halff Associates, Inc.
4030 West Braker Lane, Suite 450
Austin, Texas 78759-5356
(w/o enclosures)

Mr. Ralph Edward Newlan
Senior Professional Historian
Michael Baker, Inc.
7700 Chevy Chase Drive
Building 1, Suite 210
Austin, Texas 78752
(w/o enclosures)

Mr. David W. Moore, Jr.
President
Hardy-Heck-Moore, Inc.
611 South Congress Avenue, Suite 400
Austin, Texas 78704
(w/o enclosures)

Ms. Susan Lassell
Historic Preservation Planner
Chiang, Patel & Yerby, Inc.
The Avallon Building I
10415 Morado Circle, Suite 200
Austin, Texas 78759
(w/o enclosures)

Ms. Amy Squitieri
Vice President
Mead & Hunt, Inc.
8217 Shoal Creek Boulevard Suite 108
Austin, Texas 78757
(w/o enclosures)

Mr. Kevin A. Miller
SWCA Environmental Consultants
4407 Monterey Oaks Boulevard
Building 1, Suite 110
Austin, Texas 78749
(w/o enclosures)

Ms. Deborah Slaton
Principal
Wiss, Janney, Elstner Associates, Inc.
330 Pfingsten Road
Northbrook, Illinois 60063
(w/o enclosures)

Mr. Richard Meyer
Senior Associate
John Milner Associates, Inc.
535 North Church Street
West Chester, Pennsylvania 19380
(w/o enclosures)

Ms. Deborah Dobson-Brown
Cultural Resources Manager
LopezGarcia Group, Inc.
1950 N. Stemmons Freeway, Suite 6000
Dallas, Texas 75207
(w/o enclosures)

Mr. Eugene Foster
Manager, Historic Resources Group
6504 Bridge Point Parkway, Suite 200
Austin, Texas 78730
(w/o enclosures)