



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2008

Mr. C. Brian Cassidy
Locke, Lord, Bissell & Liddell, L.L.P.
100 Congress, Suite 300
Austin, Texas 78701-4042

OR2008-10786

Dear Mr. Cassidy:

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# 318353.

The Central Texas Regional Mobility Authority (the "authority"), which you represent, received a request for the following three categories of information: 1) JP Morgan's Response to the authority's November 27, 2007 Request For Proposals For Strategic Financial Team ("RFP"); 2) information provided by the authority during the RFI phase preceding the November 27, 2007 RFP; and 3) information relating to financing of highway projects approved on October 8, 2007. You state that some of the responsive information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. You state that release of the requested information may implicate the proprietary interests of a third-party. You state that you have notified J.P. Morgan Securities Inc. ("JP Morgan") of the request and of its right to submit arguments to this office as to why the requested information 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 disclosure under the Act in certain circumstances). We have considered the exception you claim and comments submitted by JP Morgan, and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including those in which the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. *Open Records Decision No. 541 at 4 (1990)*. However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been awarded. *Open Records Decision Nos. 306 (1982), 184 (1978)*.

You state that the information in Attachments B and C relates to the RFP issued on November 27, 2007. You inform us that the authority is currently in negotiations with JP Morgan relating to the RFP issued on November 27, 2007. You state that a contract has not yet been executed. You also state that "[s]hould the [authority] fail to reach an agreement with JP Morgan, the [authority] could elect to terminate discussions with JP Morgan and instead negotiate an agreement with the next-highest ranking proposer (or secure additional proposals)." You further state that the release of the information related to the negotiations would undermine the authority's bargaining position with other firms should current discussions with JP Morgan fail.

You state that the information in Attachment D relates to a competitive process for securing interim financing for various transportation projects. You inform us that the authority is currently in negotiations with three banks. You state that the authority has not yet finalized a loan agreement with any of the three banks, and negotiations with each over terms is ongoing. You further state that, "[t]he [authority] may still elect to seek additional proposals in order to obtain the most favorable terms possible. Disclosure of the loan proposals or their terms would give any banks currently negotiating with the [authority] or banks submitting proposals in the future a competitive advantage, as they would then know what terms their competition has already proposed." After considering your representations and reviewing the submitted information, we conclude that the authority may withhold Attachments B, C, and D under section 552.104 of the Government Code until such time as contracts have been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation). As our ruling is dispositive, we need not address the 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 318353

Enc. Submitted documents

c: Ms. Becky Halpin
c/o Mr. C. Brian Cassidy
Locke, Lord, Bissell & Liddell, L.L.P.
100 Congress, Suite 300
Austin, Texas 78701-4042
(w/o enclosures)

Mr. Don Henderson
Executive Director
J.P. Morgan Securities Inc.
221 West 6th Street, 1st Floor
Austin, Texas 78701
(w/o enclosures)