



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2008

Mr. Ricardo R. Lopez  
Feldman, Rogers, Morris & Grover, L.L.P.  
517 Soledad Street  
San Antonio, Texas 78205

OR2008-13370

Dear Mr. Lopez:

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# 323170.

The Judson Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to the district's transportation department, as well as a specified investigation report.<sup>1</sup> You indicate that you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. You also state that release of a portion of the requested information may implicate the proprietary interests of Petermann Ltd ("Petermann") and Student Transportation Specialist ("STS"). Accordingly, you have notified these companies of the request and of their opportunity to submit arguments to this office as to why their information should be excepted from public disclosure. *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 your arguments and reviewed the submitted information.

Initially, you inform this office that Exhibit 4, consisting of a completed investigation report, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-12570 (2008). In that ruling, this office held that the completed investigation constituted a privileged attorney-client communication that may be withheld under Texas Rule of Evidence 503. With regard to Exhibit 4 of the current request,

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<sup>1</sup>You state that the district sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

which is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, you must continue to rely on Open Records Letter No. 2008-12570 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As our ruling on Exhibit 4 is dispositive, we need not address your remaining arguments against disclosure of this information.

You raise section 552.104 of the Government Code with regard to Exhibit 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, including where 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 executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform this office that Exhibit 1 contains responses to a cancelled Request for Proposals issued by the district for Transportation Department Management Services, and you state that the district is currently in a process where third party vendors will have opportunities to clarify their old bids or submit new bids. You argue that release of Exhibit 1 "would allow competitors to accurately estimate and undercut future bids." Based on these representations, we find that release of Exhibit 1 would give an advantage to a competitor or bidder. Accordingly, you may withhold Exhibit 1 in its entirety under section 552.104 of the Government Code. As our ruling is dispositive, we need not address any remaining arguments against disclosure.

In summary, the district must continue to rely upon our ruling in Open Records Letter No. 2008-12570 with regards to Exhibit 4. The district may withhold Exhibit 1 under section 552.104 of the Government Code.

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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 323170

Enc. Submitted documents

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