



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2008

Mr. Brendan Hall  
City Attorney  
City of Harlingen  
P.O. Box 2725  
Harlingen, Texas 78551

OR2008-14302

Dear Mr. Hall:

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# 325104.

The City of Harlingen Housing Authority (the "authority") received a request for information related to the intended use of a specified piece of property. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state that release of the submitted information could implicate the proprietary interests of a third party, Zamora Development Group ("Zamora"). Accordingly, you state, and provide documentation showing, that you notified this third party of the authority's receipt of the request for information and its right to submit arguments to this office as to why its 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 submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). This exception protects information from public

disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* ORD 463. Section 552.104 generally does not except bid information from disclosure once the bidding is over and the contract is executed. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information relates to the sale of the specified piece of property by sealed bid. You state that the winning bid has not yet been selected. Based on your representations, and our review we conclude that release of the submitted information would harm the authority's interests, and thus, the authority may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has 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 Zamora's arguments against disclosure of its financial statement and design drawings.

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).

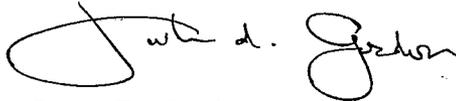
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 325104

Enc. Submitted documents

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