



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2008

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2008-15675

Dear Ms. Valkavich:

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# 327794.

The City of San Antonio (the "city") received a request for a specified letter, the city's response to that letter, and information related to an appeal filed by Parent/Child Incorporated ("PCI") pertaining to the city's Head Start program.¹ You claim that the requested 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, PCI. Accordingly, you state, and provide documentation showing, that you notified PCI of the city'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).

¹We note that the requestor has also asked the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the city has made a good faith effort to do so.

We have received correspondence from PCI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the request for the city's response to the specified letter. To the extent this information exists, we assume the city has released it to the requestor. If the city's response to the specified letter has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 city issued a Request for Proposals to provide the city with services associated with its Head Start program. You also state that the city council authorized the negotiation of contracts with prospective contractors, but explain that the final award of contracts will be contingent upon the resolution of all internal and federal appeals processes. As the delegate agency currently providing Head Start services to the city, you explain PCI submitted a "continuation refunding application" to the city pursuant to federal regulations. PCI then appealed the city's decision not to recommend PCI for funding, triggering the city's internal appeals process. You indicate that, by submitting the refunding application and appealing the city's decision, PCI is now in competition with the companies that submitted bids for providing the Head Start Services. You state that the city's selection of Head Start providers will not be completed until PCI has exhausted all internal and federal appeal processes. Further, you indicate that release of the submitted information, consisting of the specified letter and attached "continuation refunding application," which you state is a proposal for the Head Start contracts, would harm the city's selection process. Based on your representations and our review, we conclude that release of the submitted information would harm the city's interests; thus, the city 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 PCI's arguments against disclosure of the submitted information.

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,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in dark ink and is positioned above the typed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 327794

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Dr. Sharon Small
Parent/Child Incorporated
P.O. Box 830407
San Antonio, Texas 78283-0407
(w/o enclosures)