



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 1, 2008

Ms. Maria Smith
North Texas Tollway Authority
P.O. Box 260729
Plano, Texas 75026

OR2008-16292

Dear Ms. Smith:

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# 328705.

The North Texas Tollway Authority (the "authority") received a request for proposals for the "Online Plan Room Services," Proposal No. 02344-NTT-00-GS-PM. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state, and provide documentation showing, that you notified Amtek Information Service, Inc. ("Amtek") and Thomas Reprographics, Inc. ("Reprographics") of the request for information and of each company's 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) (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 received comments from Amtek. We have considered the arguments and reviewed the submitted information.

Initially, you inform us that a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-12990 (2008). In Open Records Letter No. 2008-12990, we ruled that the authority may withhold certain information under section 552.104 of the Government Code. Thus, to the extent the submitted information contains the same information we previously ruled upon, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling concerning section 552.104 was based have changed, the authority may continue to rely on that ruling as a previous determination and withhold the requested information in accordance with Open Records Letter No. 2008-12990. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 a prior attorney general ruling,

ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

To the extent the submitted information was not previously ruled upon, the authority claims this information is excepted from public disclosure under section 552.104 of the Government Code. 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. *See* Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Section 552.104 does not except information relating to competitive bidding situations once a contract has been awarded. Open Records Decision Nos. 306 (1982), 184 (1978).

You inform us that the submitted information relates to a Request for Proposals issued by the authority. You state that the authority is "currently in the process of negotiating an agreement" with Reprographics, and the agreement has not been finalized. You assert that "should the authority fail to reach an agreement with [Reprographics], the [authority] could elect to terminate discussions with [Reprographics] and instead negotiate an agreement with the next-highest ranking proposer (or secure additional proposals)." Based on your representations and our review of the submitted information, we find that the authority has demonstrated that the release of this information would harm its interests in a particular competitive situation. We therefore conclude that the authority may withhold the information it has submitted at this time pursuant to section 552.104 of the Government Code. However, we note that the authority may no longer withhold the submitted information under this exception to disclosure once a contract has been executed and is in effect.¹ *See* Open Records Decision No. 541 at 5 (1990).

In summary, the authority may continue to rely on Open Records Letter No. 2008-12990 as a previous determination and withhold the submitted information we previously ruled on in accordance with that ruling. The authority may withhold any remaining information it has submitted 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

¹As we are able to reach this conclusion, we do not address Amtek's argument against disclosure.

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).

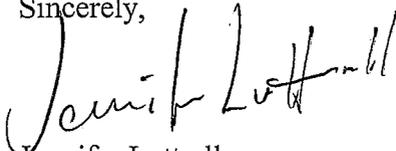
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 328705

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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