



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2008

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-17489

Dear Ms. Aguilar:

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# 331086.

The City of Corpus Christi (the "city") received two requests from the same requestor for information related to the Memorial Coliseum redevelopment, specifically (1) a list of companies, with addresses, that received the request for qualifications ("RFQ") from the city; (2) information regarding the selection process to include these companies to receive the RFQ; (3) RFQ packets received by the city; (4) request for proposal ("RFP") packets sent by the city; and (5) RFP packets received by the city.¹ You inform us the city has no information responsive to parts 4 and 5 of the request.² You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the information may implicate the proprietary interests of third parties, and you provide documentation showing you have notified these third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor.³ See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits

¹We note the first request encompassed parts 1, 2, and 4, while the second request encompassed parts 3, 4, and 5.

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³We understand the following third parties were notified: PKF Consulting, Leisure Horizons, NRP Group, and Tim Lange.

governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the claimed exception 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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *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); *see also* Open Records Decision No. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no "competitors" for that contract. *See* Open Records Decision No. 331 (1982). Furthermore, 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 us the submitted information relates to a proposed contract for the rehabilitation and redevelopment of the city's Memorial Coliseum. You state the city is still involved in a two-phase procurement process, and "the proposed contract has not been awarded, executed or made effective by the [c]ity as of the date that the [c]ity received the instant request[s]" for information. You argue release of the RFQ packets received by the city "will reveal the identities and proposed plans/ideas of potential bidders which could furnish other potential bidders with insights concerning the others' competitive capabilities which may then be used to structure [RFP] responses." Further, you argue release of the submitted information would harm the city's negotiating interests and compromise the city's bidding process with regard to the project. Based on your representations and our review, we find the city has demonstrated disclosure of this information would harm the city's interests in a particular competitive situation. We therefore conclude the city may withhold the submitted information pursuant to section 552.104 of the Government Code. We note the city may no longer withhold this information under section 552.104 once the contract has been executed.

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).

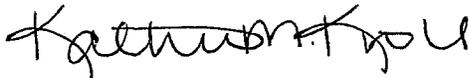
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 331086

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Keeling
c/o Mr. Randy McCaslin
Vice President
PKF Consulting
1010 Lamar, Suite 400
Houston, Texas 77002
(w/o enclosures)

Mr. Tim Lange
c/o Mr. Brent Chesney
Attorney at Law
500 North Water, Suite 530
Corpus Christi, Texas 78471
(w/o enclosures)

Mr. Joseph F. Prevratil
President and CEO
Leisure Horizons, Inc.
404 East 1st Street, Suite 256
Long Beach, California 90802
(w/o enclosures)

Mr. Daniel B. Markson &
Ms. Debra A. Guerrero
The NRP Group
111 Soledad, Suite 1220
San Antonio, Texas 78205
(w/o enclosures)