



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2008

Mr. Frank J. Garza
Law Offices of Davidson & Troilo, PC
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2008-17598

Dear Mr. Garza:

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# 330810.

The Port Authority of San Antonio (the "authority"), which you represent, received a request for (1) the design documents and recommendations of San Antonio Sound and Light ("SASL"); (2) copies of "all the first bids including pricing submitted by Southwest Sound and others;" (3) copies of the "additional bids" from all companies, including the second bid submitted by Southwest Sound; and (4) relevant evaluation criteria. You state the authority has released most of the requested information. You claim that a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state that release of a portion of the submitted information may implicate the proprietary interests of SASL. Accordingly, you have notified SASL of the request and of its opportunity to submit arguments to this office as to why its 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.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its

reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from SASL. Thus, because SASL has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the authority may not withhold any of the submitted information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

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 the information you have marked consists of the pricing information submitted by SASL in response to the authority's request for bids pertaining to its Audio/Video Systems project. You explain that all bids submitted in response to the authority's request for bids for this project have been rejected by the authority. You also explain the authority plans to "go back out for proposals" in the near future for the same project. You argue that release of the pricing information you have marked would give competitors an unfair advantage in the upcoming request for proposals and indicate that release would harm the authority's interests. Based on these representations, we find that you have demonstrated that the release of the information you have marked would harm the authority's interests in a particular competitive situation. Accordingly, the authority may withhold the marked information in its entirety under section 552.104 of the Government Code. As no exceptions have been raised for the remaining information, it must be released.

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).

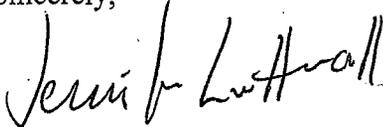
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 330810

Enc. Submitted documents

c: Requestor
(w/o enclosures)

San Antonio Sound and Light
207 Braniff
San Antonio, Texas 78216
(w/o enclosures)