



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2009

Ms. Patricia Fleming
Assistant General Counsel
TDCJ- Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-02260

Dear Ms. Fleming:

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# 335430.

The Texas Department of Criminal Justice (the "department") received a request for responses to "requests for proposals to provide new [Substance Abuse Felony Punishment ("SAFP")] beds," a list of respondents to the RFP, the amount of funding the RFP covers, the budget breakdown related to SAFP expenses in the state, and a copy of the contract the department has with Gateway Foundation to provide SAFP rehabilitation services. You inform us that you will release responsive, non-confidential information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also believe that the submitted information implicates the proprietary interests of Management & Training Corporation ("MTC"), Jones County, and Burnet County. You state, and provide documentation showing, that you notified the interested parties of this request for information and of their right to submit arguments to this office as to why the 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 correspondence from Jones County and MTR. We have considered the submitted arguments and reviewed the submitted information.

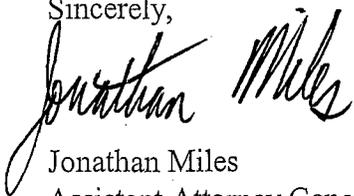
Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). 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. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the submitted information is related to a competitive bidding process that has yet to result in the selection of a winning bidder. You inform us that there is no guarantee that the vendors who have submitted proposals will be selected for the award of the contract. You argue that release of the information in question at this time would adversely affect the competitive process itself and the department's interest in obtaining the best bargain from the competition. Based on your representations, we conclude that the department may withhold the submitted information in its entirety at this time under section 552.104 of the Government Code.¹ We note that the department may no longer withhold the information on this basis once the related contract has been executed and is in effect.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹As we are able to make this determination, we need not address the other submitted arguments against disclosure.

Ref: ID# 335430

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Honorable Dale Spurgin
Jones County Judge
Jones County Commissioner's Court
P.O. Box 148
Anson, Texas 79501
(w/o enclosures)

Dawn McCall
Vice President & General Counsel
Management & Training Corporation
P.O. Box 10
Centerville, Utah 84014
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Honorable Donna Klaeger
County Judge
Burnet County
220 South Pierce
Burnet, Texas 78611
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