



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

Ms. Nancy Nelson
Associate Vice President
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998-0500

OR2010-18298

Dear Ms. Nelson:

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# 402090.

The El Paso Community College District (the "district") received a request for transaction data from each district Automated Teller Machine ("ATM") over a specified time period and the current rental or payment arrangement for the current ATM service.¹ You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Speedy Buck. Accordingly, you state, and provide documentation showing, you notified Speedy Buck of the request for information and of its right to submit arguments to this office as to why the submitted 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 Speedy Buck. 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. The

¹We note that the requestor has asked the district 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 district has made a good faith effort to do so.

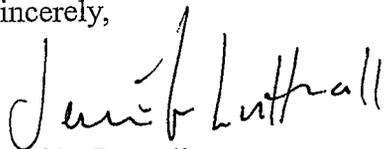
purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5; *see also* Open Records Decision No. 309 (1982).

We understand the district currently has a contract with the ATM service vendor whose information is at issue. You claim, however, that the district issued a request for proposals for a new ATM service contract that has not yet been completed. You assert that release of the current contract and pricing would give an advantage to the current and potential bidders for the new ATM service contract. You also state that rebidding for the new ATM service contract may occur if the district's trustees reject all current bids. Based on your representations and our review of the submitted information, we find you have demonstrated that release of the submitted information would harm the district's interests in a particular ongoing competitive situation. *See* ORD 592. Therefore, the district may withhold the submitted information under section 552.104. As we are able to make this determination, we need not address Speedy Buck's arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 402090

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sue Noah
Speedy Buck
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(w/o enclosures)