



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 29, 2011.

Ms. Denise V. Chaney  
Counsel for the Austin Community College District  
Bickerstaff Heath Delgado Acosta L.L.P.  
Building One, Suite 300  
3711 South Mopac Expressway  
Austin, Texas 78746

OR2011-09312

Dear Ms. Chaney:

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# 422228.

The Austin Community College District (the "college"), which you represent, received two requests for contracts and other specified records related to the college's potential and past acquisitions of Highland Mall and surrounding properties. You state the college has released the Dillard's purchase agreement requested in category two. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. You also claim release of some of the submitted records may implicate the proprietary interests of Redleaf Properties, L.L.C., and its principal, Matt Whelan. Thus, pursuant to section 552.305 of the Government Code, you notified Redleaf Properties and Matt Whelan of the requests and of their rights to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). 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). 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). Generally, section 552.104 does not except information

relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978) (section 552.104 no longer applicable when bidding had been completed and contract is in effect).

The submitted information pertains to the college's past purchase of certain real properties. However, you inform us the college is in the process of negotiating a contract for the purchase of a related property. You state releasing the submitted information will enable the seller of the related property and other potential buyers to gauge the terms of the college's offers for the related property, and thus adversely affect the college's ability to negotiate the best possible purchase price for the related property. Based on your representations and our review, we find you have demonstrated release of the records you marked under categories three, four, five, seven, eight, ten, fourteen, and fifteen of the requests would cause specific harm to the college's interest in this particular competitive situation. Accordingly, the college may withhold this information under section 552.104 of the Government Code.<sup>1</sup> We note you marked one document solely under categories one, two, and six of the requests. You do not raise any exceptions to the disclosure of this document. Furthermore, neither Redleaf Properties nor Matt Whelan submitted any arguments against the disclosure of this document. Accordingly, the marked document must be released.

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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

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<sup>1</sup>As our ruling for this information is dispositive, we need not address the college's remaining argument against disclosure or the arguments against disclosure submitted by the legal counsel for Redleaf and Matt Whelan.

Ref: ID# 422228

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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