



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2011

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

OR2011-10657

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# 424774.

The El Paso Community College (the "college") received a request for a copy of the college's complete Wells Fargo account analysis statement for January and February 2011. You claim that some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Wells Fargo Bank, N.A. ("Wells Fargo"). Accordingly, pursuant to section 552.305 of the Government Code, you state, and provide documentation showing, you have notified Wells Fargo of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining 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 Act in certain circumstances). We have received comments from Wells Fargo. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted information, which we have marked, that is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the college is not required to release such information in response to the request.

Next, we note Wells Fargo seeks to withhold information that it submitted to our office with its arguments against disclosure that the college did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the college. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The purpose of this exception 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 competitor will gain an unfair advantage will not suffice. Furthermore, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision No. 541 at 4 (1990).

You state the submitted information relates to a bank depository bid that the college has not yet issued. You claim releasing the information you have marked would give an unfair advantage to other participants in the competitive process. Based on your representations and our review, we conclude the college may withhold the information you have marked under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at expense of others and could be detrimental to public interest in contract under negotiation).

Next, we note the submitted information contains bank account numbers. Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."¹ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the college must withhold the bank account numbers we have marked under section 552.136 of the Government Code.²

In summary, the college may withhold the information you have marked under section 552.104 of the Government Code. The college must withhold the information we

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

have marked under section 552.136 of the Government Code. The remaining information 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 424774

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Giselle Smith-Johnson
VP/Principal Industry Specialist
221 North Kansas Street
El Paso, Texas 79901
(w/o enclosures)