



January 24, 2000

Mr. Clyde A. Pine, Jr.
Mounce, Green, Myers, Safi & Galatzan
100 N. Stanton, Suite 1700
El Paso, Texas 79950-1977

OR2000-0222

Dear Mr. Pine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131372.

The El Paso Independent School District (the “district”) received a request for a proposal made by American Fidelity Life Assurance Company (the “company”) in response to a district request for proposals for certain cancer and hospital intensive care insurance plans. You have advised this office that the company might consider portions of the requested information to be protected by section 552.110 of the Government Code and notified the company of the request pursuant to section 552.305 of the Government Code. We also understand you to claim that the requested information may be withheld under section 552.104 of the Government Code.

Section 552.104 protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982); 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978).

We understand you to say that the contract, in connection with which the proposal at issue was submitted to the district, has been awarded to another entity. You have not established that the competitive process is ongoing with respect to this contract. Therefore, the proposal may not be withheld under section 552.104.

Section 552.110 protects trade secrets and certain commercial or financial information. Section 552.305 requires a governmental body which receives a request for information, the release of which might implicate a person's proprietary interests and be subject to the section 552.110 exception, to notify such person not later than the tenth business day after receiving the request. The notice provides that the person may submit to the attorney general not later than the tenth business day after he receives the notice "each reason he has as to why the information should be withheld" and "a letter memorandum, or brief in support of that reason."

The material you submitted reflects that, pursuant to section 552.305, the company was notified of the instant request on November 11, 1999. To date, this office has received no communication from the company as to why the requested proposal is protected from disclosure. Consequently, we have no basis for finding that the proposal may be withheld. Therefore, it must be released.

We note, finally, that the company here also asserts a copyright interest in the materials at issue. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 131372

Encl. Submitted documents

cc: Ms. Anna Maynard
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(w/o enclosures)