



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 29, 1997

Mr. W. Daniel Vaughn  
McLeod, Alexander, Powel & Apffel  
P.O. Box 639  
Galveston, Texas 77553

OR97-1719

Dear Mr. Vaughn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107470.

You represent the Board of Trustees of the Galveston Wharves (the "Wharves"), which received a request for a copy of a proposed lease agreement between the Wharves and the Port of Houston Authority. A copy of the proposed lease for the container terminal was submitted to this office for review. You assert that section 552.104 of the Government Code protects the document from required public disclosure.

Section 552.104 may be invoked by a governmental body when there is a competitive bidding situation involving a specific commercial or contractual matter, *See* Open Records Decision No. 463 (1987), for the period in which governmental officials are in the process of evaluating the proposals from competitors. Open Records Decision No. 170 (1977). The purpose of section 552.104 is to protect a governmental body's interests in a specific commercial or contractual situation by keeping some competitors or bidders from gaining unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. However, in this situation, you have not shown that this is an actual competitive bidding situation. Nor is it apparent that there is any party other than the Port of Houston Authority seeking to lease the container terminal site.<sup>1</sup>

Section 552.104 may also be invoked by a governmental body when the governmental body itself is acting as a competitor in the marketplace. In Open Records Decision No. 593 (1991), this office determined that there are certain types of situations in which a governmental body may be deemed a "competitor" for purposes of section 552.104. In that decision, we

---

<sup>1</sup>We note that you have not shown the applicability of the city charter provision cited concerning competitive bidding for purchasing purposes.

concluded that "[w]here competition is authorized by law, we believe that a governmental body must be afforded the right to claim the 'competitive advantage' aspect" of section 552.104. *Id.* at 4. Two criteria must be met for a governmental body to be deemed a competitor for purposes of section 552.104. First, the competition must be authorized by law. Open Records Decision No. 593 (1991). Second, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *Id.* General allegations of a remote possibility of harm are not sufficient to show the applicability of section 552.104. *Id.* In this instance, however, you have not demonstrated that there is an actual or potential harm in this situation to any competitive, marketplace interests that the Wharves may have.

Since the Wharves has not shown the applicability of section 552.104 in this situation, the requested information must be disclosed. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 107470

Enclosures: Submitted documents

cc: Mr. Michael A. Smith  
The Daily News  
P.O. Box 628  
Galveston, Texas 77553  
(w/o enclosures)