



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2004

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-7906

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208925.

The City of Houston (the "city") received a request for "any and all correspondence, economic analysis, incentives offered or requested, proposed or final contracts, deeds of trust, proposed or actual letters of credit and any other document relating to Citgo Petroleum relocating its headquarters from Tulsa to Houston." You claim that the requested information is excepted from disclosure under sections 552.104, 552.111, and 552.131 of the Government Code. You also indicate that release of the information submitted as Exhibit E may implicate the proprietary interests of Citgo Petroleum Corporation ("Citgo"), and you provide documentation showing that you notified Citgo of the request and of its right to submit arguments to this office as to why the 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 Public Information Act in certain circumstances). We have considered your claimed exceptions and reviewed the submitted representative sample of information.¹

As a preliminary matter, we note that Exhibit E is the same information at issue in a pending lawsuit between the Office of the Attorney General and the Greater Houston Partnership, *Greater Houston Partnership v. Abbott*, Cause No. GN401798, pending in the 345th District

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Court of Travis County, Texas. Accordingly, we decline to issue a ruling on the public availability of this information at this time, and will allow the trial court to resolve the issue of whether Exhibit E must be released. Because we do not address the public availability of Exhibit E in the present ruling, we do not address the comments submitted by Citgo.

With respect to Exhibits A through D and F through H, we address your claim under section 552.104 of the Government Code. The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). In this case, you state that the city has a competitive interest in the distribution of economic incentive funding provided by the Governor's Economic Development Office. You advise that the city has entered into a partnership agreement for the purpose of negotiating with Citgo in Citgo's bid to secure economic development incentive funds. You also contend that release of the submitted information will undermine the city's negotiating position and will disadvantage both the city and Citgo with respect to other parties in competition for funding through the economic development incentive program. Based on your representations and our review of the submitted information, we find the city has established that section 552.104 is applicable in this instance. We therefore determine that the city may withhold Exhibits A through D and F through H pursuant to section 552.104 of the Government Code. Based on this finding, we need not reach your remaining claimed exceptions to disclosure.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 208925

Enc: Submitted documents

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