



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2004

Mr. Richard D. Davis
City Attorney
City of Canton
301 South Main Street
Canton, Texas 75103

OR2004-8045

Dear Mr. Davis:

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# 209550.

The City of Canton (the "city"), which you represent, received a request for the "vendor list" for the city's First Monday Trades Day. You claim that the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.117 of the Government Code.¹ We note that you also raise section 552.305 of the Government Code as an exception to disclosure. Section 552.305 states in relevant part that "[i]n a case in which information is requested under this chapter and a person's privacy or property interests may be involved . . . a governmental body may decline to release the information *for the purpose of requesting an attorney general decision.*" Gov't Code § 552.305 (emphasis added). Thus, section 552.305 does not except information from public disclosure under the Act. Rather, section 552.305 is a procedural provision permitting a governmental body to withhold information that may be private while the governmental body is seeking an attorney general's decision under the Act. We note that section 552.101 of the Government Code encompasses the

¹While you raise section 552.024 rather than section 552.117, we note that section 552.024 is not itself an exception to disclosure, but rather a provision of the Act that requires a governmental body to permit officials and employees to elect to keep certain personal information confidential. For employees who timely elect to keep such information confidential, the information may be excepted from disclosure under section 552.117(a)(1) of the Government Code. See Gov't Code §§ 552.024, .117. Thus, we understand you to raise section 552.117 as an exception to disclosure.

doctrines of common law and constitutional privacy. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations.² See Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. The governmental body must first demonstrate that it has specific marketplace interests. See Open Records Decision No. 593 at 4 (1991) (governmental body that has been granted specific statutory authority to compete in the private marketplace may demonstrate marketplace interests analogous to those of a private entity). Second, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

In this case, you inform us that the city "operates a flea market entitled 'First Monday Trade Days' [("Trade Days"), which generates] the largest portion of the city's revenue [by] leasing spaces to vendors who sell their goods/services." You assert that release of the submitted information would place the city at a disadvantage with other competing entities, and explain that the city "faces competition from individuals and other cities and communities that are emulating the . . . Trade Days concept [and] are competing for the same business vendors." You also state that release of the requested information will "have a severe negative impact upon the city's finances if the competition is successful in enticing these vendors away from the [city's] location." Based upon your representations, we find that the city has sufficiently demonstrated that it has specific marketplace interests in this instance and that release of the submitted information would harm the city in a particular competitive situation. See ORD 593. Thus, we conclude the city may withhold the submitted information based on section 552.104 of the Government Code.³

²As you do not indicate that the information in question relates to a competitive bidding situation, we do not consider this aspect of section 552.104.

³As our ruling is dispositive, we do not address your remaining claims.

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 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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name being more prominent.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 209550
Enc. Submitted documents

c: Mr. Donald R. Stout
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(w/o enclosures)