



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2005

Mr. Craig Magnuson
City Attorney
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

OR2005-00982

Dear Mr. Magnuson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 218009.

The City of Mansfield (the "city") received two requests for a specified city ordinance, written value opinions concerning the sale of a specified parcel of land, and information identifying real estate brokers or appraisers who have provided information to the city. You indicate the city has released the requested ordinance. We note that the requestors appear to ask the city to answer fact questions. In responding to a request for information under the Public Information Act (the "Act"), a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.–San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*. We therefore assume that the city has made a good-faith effort to locate any documents that would be responsive to the request. You claim that some of the information at issue is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have

also considered comments submitted by the requestors. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive situations. *See* Open Records Decision No. 592 (1991). Section 552.104 typically can apply in the context of competitive bidding for a government contract. In the context of competitive bidding, section 552.104 generally does not except information after bidding has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990). This office has also 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. *See* Open Records Decision No. 593 (1991). First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. In all instances, 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 Nos. 541 at 4 (1990); 514 at 2 (1988).

In this case, you contend that release of the requested information "would have an adverse effect on the City's ability to maximize the income potential" of real property the city seeks to sell. Upon review of your comments and the submitted information, however, we find you have not explained that the city is engaged in a specific open bidding situation with respect to the property. *See* Open Records Decision No. 541 (1990). Moreover, you have not established that the city has specific marketplace interests with respect to the property. *See* Open Records Decision No. 593 (1991). We therefore determine the city has not established that section 552.104 is applicable in this situation. Thus, as you raise no other exceptions to disclosure, we conclude the city must release the submitted information to the requestors.

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# 218009

Enc: Submitted documents

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