



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2006

Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2006-13682

Dear Ms. Thornton:

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# 264924.

The Office of the Governor (the "governor") received a request for the Owens Corning application submitted for the Texas Enterprise Zone program. You claim that the requested information is excepted from disclosure under sections 552.104, 552.110, 552.111, and 552.131 of the Government Code. You also indicate that the governor notified Owens Corning of this request for information and of its right to submit arguments to this office as to why the information should not be released.¹ We also received arguments from Owens Corning. We have considered all of the submitted arguments and have reviewed the information you submitted.²

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Govt. Code § 552.104(a). The

¹See Govt. Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Govt. Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²Although you also cite to sections 552.101, 552.106, and 552.107 of the Government Code, you have not submitted arguments in support of the applicability of those exceptions. Therefore, we do not consider your assertion of sections 552.101, 552.106, and 552.107. See Gov't Code §§ 552.301(e)(1)(A), .302.

protections afforded by section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See* Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both cases, the governmental body must demonstrate the existence of actual or potential harm to its interests in a particular competitive situation. *See id.* at 2; *see also* Open Records Decision Nos. 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* Open Records Decision No. 593 at 2.

Having considered the governor's arguments and reviewed the submitted information, we conclude that the governor has sufficiently demonstrated that section 552.104 is applicable in this instance. Therefore, the governor may withhold the submitted information under section 552.104 of the Government Code.³

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. Govt. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

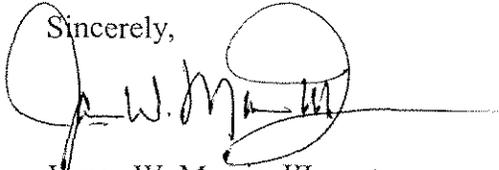
³Because our ruling is dispositive, we do not address the remaining claims of the governor or those of Owens Corning.

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 Office of the Attorney General 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. 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 'J.W. Morris, III', with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 264924

Enc: Submitted documents

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