



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2007

Ms. Laura Garza Jimenez
Nueces County Attorney
County of Nueces
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2007-05887

Dear Ms. Jimenez:

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# 278360.

The Nueces County Judge (the "county") received a request for (1) a listing of all events booked, past and future, at the Richard M. Borchard Regional Fairgrounds facilities, including client, event and rent and other associated costs with booking, and (2) actual and projected budgets for the facilities. You state you will release some information to the requestor, but claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert the submitted information is excepted under section 552.104 of the Government Code, which 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 bidding situations, including when a governmental body competes with private entities in the marketplace. *See* Open Records Decision No. 592 (1991). Under section 552.104, a governmental body may withhold information in order to maintain its competitive advantage in the marketplace if it can demonstrate (1) it has specific marketplace interests and (2) there is a possibility of specific harm to those marketplace interests if the requested information is released. *See* Open Records Decision No. 593

(“competitive aspect” of previous version of section 552.104 applies to governmental bodies as bidders).

You inform us that the county intends “to make the facilities self-sustaining, that is all revenue generated by the facilities would cover the costs to run the facilities.” You further inform us that release of this information “will compromise the [c]ounty’s ability to negotiate with current and potential promoters.” Lastly, you state that if released, this information would “provide competitors with the information they need to lure current clients away.” Based on our review of your arguments and the submitted information, we conclude you have demonstrated that the county has a specific marketplace interest for purposes of section 552.104. *See, e.g.*, Open Records Decision No. 593. We note, however, that the event names, types, and dates are publicized before the event to attract attendees. Thus, although we find, based on your representations and our review, that you have established that the county has legitimate marketplace interests for the purposes of section 552.104, you have only shown the possibility of specific harm if the status, rent charges, and any costs associated with the events were released. Accordingly, you may withhold this information, which we have marked, under section 552.104 of the Government Code. As to the event names, types, and dates, the county has failed to demonstrate that release of this information would cause a specific threat of actual or potential harm to its interests in a particular competitive situation. Accordingly, the county may not withhold the event names, types, and dates under section 552.104 of the Government Code. As no other exceptions against disclosure are raised, the remaining information must be released.

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, 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

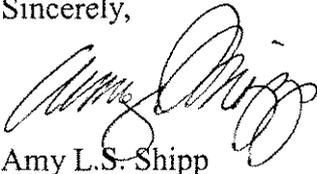
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 278360

Enc. Submitted documents

c: Ms. Denise Malan
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