



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2007

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren Suite 108
Irving, Texas 75062-2763

OR2007-06076

Dear Mr. Boyle:

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# 282411.

The City of Grapevine (the "city"), which you represent, received a request for information relating to a proposal to host the 2011 Super Bowl. You claim that some of the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. You also believe that this request for information implicates the interests of the North Texas Super Bowl XLV Bidding Committee, Inc. (the "committee"). You notified the committee of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We received arguments from an attorney for the committee. 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 disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²We note that the committee has submitted information that it claims should be withheld from disclosure. This decision is applicable only to the information that the city submitted to this office. See Gov't Code § 552.301(e)(1)(D).

and in certain other competitive situations. *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. *See id.* 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. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You seek to withhold the information submitted as Exhibit B under section 552.104. You inform us that the city, through the committee, is seeking to have the North Texas region selected as host for the Super Bowl in 2011. You explain that the selection process involves the submission of competitive bids to the National Football League, which will review the bids and select the most qualified city or region, based on a competitive analysis. You inform us that the selection of the North Texas region to host the Super Bowl would have an estimated \$300 million economic impact on the city and other governmental entities in the area. You state that the bidding process is ongoing and that bidders still have the ability to amend their proposals. You assert that the information in Exhibit B reflects bidding strategy and bid preparation. You contend that the release of this information would give advantages to other bidders and result in substantial competitive harm to the city. Based on your representations, we find that you have demonstrated that the city has specific marketplace interests in the Super Bowl site selection process. We also find that you have sufficiently shown that the release of the information at issue would result in specific harm to the city’s marketplace interests. We therefore conclude that the city may withhold Exhibit B at this time under section 552.104.³

We note that section 552.137 of the Government Code is applicable to some of the remaining information.⁴ Section 552.137 states in part that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address

³As we are able to make this determination, we need not address your other claims with respect to Exhibit B or the arguments that we received from the committee.

⁴Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

that a governmental entity maintains for one of its officials or employees. We have marked the types of e-mail addresses that the city must withhold under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

We also note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the city may withhold Exhibit B at this time under section 552.104 of the Government Code; and (2) the city must withhold the types of e-mail addresses that we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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).

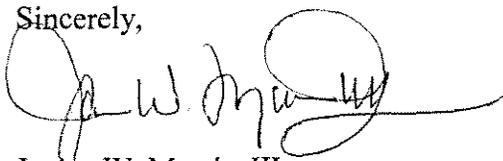
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

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

JWM/ma

Ref: ID# 282411

Enc: Submitted documents

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