



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2008

Ms. Jo-Christy Brown
City Attorney
City of Bastrop
Law Offices of J.C. Brown
1400 West Avenue, Suite 100
Austin, Texas 78701

OR2008-08610

Dear Ms. Brown:

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# 313868.

The City of Bastrop (the "city"), which you represent, received a request for all correspondence between representatives of the proposed Villa Muse/Alpha 2 project, the mayor, and the city council. You claim that the submitted e-mails and attachments are excepted from disclosure under sections 552.101, 552.104, 552.110, 552.131 of the Government Code. You also claim that the information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified Villa Muse Holdings, LLC ("Villa Muse") of the city's receipt of the request for information and of Villa Muse's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and comments submitted by Villa Muse, and reviewed the submitted information.

Initially, we note that the e-mail and attachment submitted as Exhibit L was created after the request for information was received. Thus, this information is not responsive to the request.

This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with competitive bidding 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 state the city and Villa Muse are currently in negotiations regarding a proposed multi-billion dollar development project that Villa Muse wishes to develop within the city's territorial jurisdiction. You also inform us that other municipalities, including a neighboring city, have expressed interest in the project and seek to compete with the city as the site for the project. Based on these representations, we find you have established that the city has legitimate marketplace interests in the proposed project for the purposes of section 552.104. Furthermore, you explain that the submitted e-mails and attachments contain details of the proposed project and negotiations, including proposed site locations, incentives offered, and potential monetary gains by both parties. You assert that release of this information would give a competitor an advantage over the city by allowing the competitor to offer a more attractive proposal to Villa Muse, thus undercutting the city's negotiating position with Villa Muse. Based on your representations and our review, we find you have established that release of the submitted responsive e-mails and attachments would cause the possibility of specific harm to the city. Accordingly, you may withhold the submitted responsive information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments or Villa Muse's arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

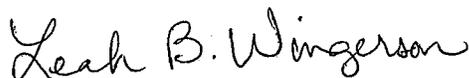
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 313868

Enc. Submitted documents

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