



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2008

Mr. Richard S. Talbert  
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OR2008-09608

Dear Mr. Talbert:

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# 315785.

The City of La Feria and the La Feria Industrial Development Corporation, Inc. (collectively, the "city"), which you represent, received a request for a proposal submitted by the city to the United States Department of Veterans Affairs (the "VA"). You claim that the submitted proposal is excepted from disclosure under sections 552.104 and 552.131 of the Government Code.<sup>1</sup> You also state that release of this proposal could implicate the proprietary interests of a third party, Invenco Veterans Services, LLC ("Invenco"). Pursuant to section 552.305 of the Government Code, the city has notified Invenco of the request for information and of its right to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the city's arguments and reviewed the submitted information. We have also received and considered arguments submitted by both Invenco and the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>Although you initially raised section 552.101 of the Government Code in conjunction with FOIA, common-law privacy, and constitutional privacy, you have not submitted arguments showing how section 552.101 applies to the submitted proposal. Therefore, we assume the city has withdrawn its claim under section 552.101. Gov't Code § 552.301(e) (governmental body must provide arguments explaining why exceptions raised should apply to information requested).

Both the city and Invenco raise section 552.104 of the Government Code. We note that this section protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 (1991). Accordingly, we will address the city's arguments under section 552.104, but we will not address Invenco's arguments under this section. Section 552.104 excepts from 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 its third party partner, Invenco, have submitted the proposal at issue as the first step of negotiations with the VA regarding a proposed veterans' hospital providing services to the Rio Grande valley. You inform us that the city is in competition with other cities, other economic development corporations, and other private entities, all of whom seek to bring VA services to locations in the Rio Grande valley other than the city. 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 proposal contains lease and real property information, specific economic development opportunities, and finance options. You argue that release of the proposal would harm the city by allowing any competitors to generate comparatively better offers. Based on your representations and our review, we find you have established that release of the submitted proposal would cause the possibility of specific harm to the city. Accordingly, you may withhold the submitted proposal in its entirety under section 552.104 of the Government Code. As our ruling is dispositive, we need not address any remaining 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 315785

Enc. Submitted documents

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