



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 2, 2008

Mr. John Danner
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2008-13566

Dear Mr. Danner:

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# 323385.

The City of San Antonio (the "city") received a request for three categories of information created since January 1, 2005, pertaining to the acquisition and use of a specified piece of property. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.105, 552.106, 552.107, 552.111, 552.131, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is not responsive to the instant request for information. The requestor asks for specified information created within a particular time period. Thus, any information created outside of this particular time period is not responsive. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

¹Although you raise the attorney-client privilege under rule 503 of the Texas Rules of Evidence, we note that section 552.107 is the proper exception to raise for your attorney-client privilege claim in this instance. See Open Records Decision No. 676 (1988).

Section 552.104 of the Government Code excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The 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* ORD 593 at 2.

You state that the submitted information pertains to the acquisition of a specified piece of property by the city. You explain that the city is involved in negotiations with the current owner, and that no agreement regarding the property acquisition has been made. You also state that the requestor's client, which currently has a conflicting lease interest in the property, is involved in these negotiations. Finally, you assert that the release of this information, which consists of the city's file pertaining to this acquisition, would give the current owner and the requestor's client a competitive advantage over the city in these negotiations. Based on your arguments and our review of the submitted information, we find you have demonstrated the city has specific marketplace interests that would be harmed if the submitted information is released. Therefore, the submitted information is excepted from disclosure under section 552.104. Because our determination on this issue is dispositive, we need not address your remaining arguments.

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), (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

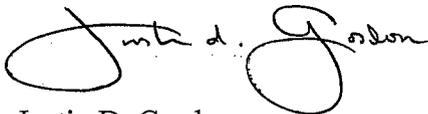
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/ma

Ref: ID# 323385

Enc. Submitted documents

c: Mr. James M. Summers
300 Convent Street, Suite 2200
San Antonio, Texas 78205
(w/o enclosures)