



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-05350

Dear Mr. Bounds:

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# 376288.

The City of Corpus Christi (the "city") received a request for information pertaining to contracts and shows at the American Bank Center Arena (the "arena"). You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of SMG. Accordingly, you state, and provide documentation showing, that the city notified SMG of the request and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 under the Act in certain circumstances). We have received comments from a representative of

SMG. We have considered the submitted arguments and reviewed the submitted information.¹

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 inform us the city, in conjunction with SMG, licenses the use of the arena. You state the city competes with other local governmental and private entities that also operate facilities in the areas within close proximity to the arena for the same types of events and clients. You explain the submitted agreements detail similar "concessions, services, incentives[,] and discounts" that would be used for negotiations with other clients seeking to use the arena. You assert that, if the submitted agreements were to be released, the city would be placed at a severe competitive disadvantage when negotiating these terms with other clients interested in using the arena. You further state the city negotiates for the use of the arena with other clients on a year-round basis. Based on your representations and our review, we find you have demonstrated that section 552.104 is applicable to the submitted information. Therefore, we conclude the city may withhold the submitted information under section 552.104 of the Government Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 376288

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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