



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2010

Mr. Leo J. Welder, Jr.
Welder, Leshin, Lorenz, McNiff, Buchanan & Hawn, L.L.P.
800 North Shoreline Boulevard, Suite 300 North
Corpus Christi, Texas 78401

OR2010-06707

Dear Mr. Welder:

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# 378862.

The Port of Corpus Christi Authority of Nueces County (the "authority"), which you represent, received a request for all correspondence since January 1, 2010 between Texas A&M University System (the "system") staff and authority staff regarding Naval Station Ingleside and all correspondence since February 15, 2010 between a named individual and authority commissioners regarding Naval Station Ingleside. You state you have released most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code.¹ You also state the release of the submitted information may implicate the proprietary interests of the system. Accordingly, you state, and provide documentation showing, that you notified the system of the request and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the system. We have considered the submitted arguments and reviewed the submitted information.

¹Although you raise section 552.110 of the Government Code in your initial brief, you make no arguments explaining the applicability of this exception to the submitted information. Therefore, we assume you have withdrawn this exception.

Initially, we must address the authority's obligations under section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(b). While you raised section 552.104 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.111 within the ten-business-day deadline. Section 552.111 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, because you have failed to comply with the procedural requirements of section 552.301, the authority has waived its claim under section 552.111. Therefore, the authority may not withhold any of the submitted information under section 552.111 of the Government Code. However, we will address your timely raised exceptions to disclosure of the submitted information.

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).

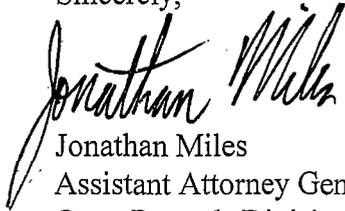
You inform us the authority has entered into a development services agreement with the system for the management of land owned by the authority. You attest that although the system is the master developer of the site, the authority must approve any sale or lease of the site. You further state that the information at issue reveals the businesses to whom the system, as master developer, is trying to lease or sell portions of the property. You further state the authority competes with other entities for the same types of businesses and, if the submitted information was released, it would force the authority to offer more incentives and lower rental rates that it would have to provide otherwise; thus, placing the authority at a competitive disadvantage with those other entities. 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 authority may withhold the submitted information under section 552.104 of the Government Code.

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.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 378862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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