



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2010-06761

Dear Ms. Grace:

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# 379073.

The City of Austin (the "city") received a request for the following information pertaining to Austin Bergstrom International Airport and Parking Company of America d/b/a Airport Fast Park ("Fast Park") for 2007, 2008, and 2009: (1) monthly parking revenue by lot; (2) monthly total paid exits by lot; (3) parking rate by lot; and (4) total number of stalls by lot. You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Although you do not take a position as to whether the remaining information is excepted under the Act, you state its release may implicate the proprietary rights of Fast Park. Accordingly, you state, and provide documentation showing, that you have notified Fast Park of its right to submit arguments to this office as to why the submitted information pertaining to its company should not be released. *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

received correspondence from Fast Park. We have considered the submitted arguments and reviewed the submitted information, a portion of which is a representative sample.¹

Initially, we note the requestor has only asked for information pertaining to the years and categories of information specified. Thus, the information you have submitted relating to the city's parking operations at Austin-Bergstrom Airport for other years, which we have marked, and non-requested categories of information, which you have marked, are not responsive to the instant request. In addition, some of the information you have submitted pertaining to Fast Park, which we have marked, does not fall within the specified categories of requested information, and thus is also not responsive. The city does not need to release the non-responsive information in response to this request and this ruling will not address that information.

You contend that the information you have marked is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 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 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 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 that as a home rule city, the city has specific marketplace interests in the operation of its airport that are "analogous to those of a private entity." You state that the "[c]ity's airport parking operations compete for business with private parking operations near the airport." You inform us that the airport is required to be financially self-sustaining under applicable federal aviation law and that "[p]arking revenue is by far the airport's largest source of non-airline revenue and is critical to funding airport development, operations, maintenance, and security." You explain that "[p]roviding information on the number of customers and revenue per lot, per month, when combined with the rates and capacities of

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.

each lot provides a competitor a powerful tool to better price its product to capture customers from the [c]ity's airport parking operations." You further explain that if released, the submitted information "will give the [c]ity's competitors information about the number of customers the [c]ity's airport parking facilities serve and the total amount of revenue generated from those customers that would provide the competitors an unfair advantage against the [c]ity in the airport parking business, resulting in less money being available for the [c]ity to operate and maintain the airport and fund essential capital and security improvements." Finally, you contend release of the city's proprietary information would put the city on unequal footing with its private competitors. Based on your representations and our review of the submitted information, we find that the city has sufficiently demonstrated that it has specific marketplace interests in this instance and that release of the information you have marked would harm the city in a specific competitive situation. *See* ORD 593. Thus, we conclude the city may withhold the information it has marked under section 552.104.

Next, we address Fast Park's argument for its responsive information under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See id.*; Open Records Decision No. 661 (1999) at 5-6 (for information to be withheld under commercial or financial information prong of section 552.110(b), business must show by specific factual evidence that substantial competitive injury would result from release of the particular information at issue).

Upon review, we find that Fast Park has not made the specific factual and evidentiary showing required by section 552.110(b) that release of its submitted information would cause Fast Park substantial competitive harm. *See* ORD 661. Therefore, the city may not withhold any portion of the responsive information pertaining to Fast Park under section 552.110(b) of the Government Code.

In summary, the city may withhold the information it has marked under section 552.104 of the Government Code. The remaining responsive information must be released.

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/em

Ref: ID# 379073

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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