



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

Mr. Richard Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2010-07529

Dear Mr. Bilbie:

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# 380466.

The City of Harlingen (the "city") received a request for records of travel expenses for four named city officials over a specified time period. You state the city has released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed 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 city is currently in negotiations with a business prospect. You state the city is competing “with other cities with regard to the prospect in question.” You explain “release of any information about this prospect, such as the prospects [sic] location, would . . . harm delicate negotiations[.]” You assert that, if the information at issue were to be released, the city would be placed at a competitive disadvantage because other area cities would be interested in acquiring the business prospect if its identity were known. Based on your representations and our review, we find you have demonstrated that section 552.104 is applicable to some of the information at issue. Therefore, the city may withhold the information we have marked under section 552.104 of the Government Code.¹ However, the city has not established that release of any of the remaining information at issue would cause specific harm to the city’s marketplace interests; therefore, the city may not withhold any of the remaining information under section 552.104.

Next, the city raises section 552.131 of the Government Code for the remaining information at issue. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov’t Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “commercial 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.” *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). We note section 552.131(a) does not protect the interests of a governmental body regarding the release

¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

of information pertaining to economic development negotiations. Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See* Gov't Code § 552.131(b). Section 552.131(b) protects the interests of governmental bodies, not third parties.

You state this information consists of economic development information related to the city's negotiations. You inform us that release of the information at issue would reveal the business prospect and "potentially lead to the revelation of other critical information that would interfere with the development of the business prospect[.]" After reviewing your arguments and the remaining information, we find the city has not established the remaining information consists of a business prospect's trade secret or commercial or financial information that would be excepted under section 552.131(a). Further, no third party has made any claims of either protected trade secret or commercial or financial information for the information responsive to this request. Thus, section 552.131(a) is inapplicable to the remaining information. Further, the city has not established the remaining information details financial incentives being offered to a business prospect by the city. Therefore, the city may not withhold the remaining information under section 552.131 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.104 of the Government Code. The remaining 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 380466

Enc. Submitted documents

c: Requestor
(w/o enclosures)