



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

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

OR2010-08599

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# 382414.

The City of Corpus Christi (the "city") received a request for all communications between the city and Double Puck Sports, LLC ("Double Puck") in the past three months. You claim most of the submitted records are excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted records may implicate the proprietary interests of third parties SMG and Double Puck. Accordingly, you state, and provide documentation showing, you notified SMG and Double Puck of the city's receipt of the request for information and of their right to submit arguments to this office as to why their information should not be released to the requestor. *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 considered comments submitted by SMG 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 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 the city, in conjunction with SMG, operates the American Bank Center arena (the "center"). You state the city competes with other local governmental and private entities that also operate facilities in the areas within close proximity to the center for the same types of events and clients. You state the information you seek to withhold under section 552.104 contains details concerning the services, incentives, concessions, and discounts that are provided to client Double Puck in exchange for fees charged for use of the center. You contend the release of this information would provide competing entities with information they could use to underbid the center for Double Puck's business. Based on your representations and our review, we find you have established that the city has a legitimate marketplace interest for the purposes of section 552.104 and that release of the information at issue would cause the possibility of specific harm to the city. Accordingly, the city may withhold the information you marked under section 552.104.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have received comments only from SMG explaining why its information should not be released. Therefore, we have no basis to conclude Double Puck has a protected proprietary interest in its information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the remaining information on the basis of any proprietary interest Double Puck may have in it.

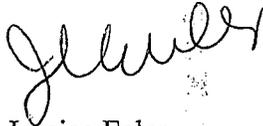
In summary, the city may withhold the information you marked under section 552.104 of the Government Code. The remaining information must be released.

¹As our ruling under section 552.104 of the Government Code is dispositive, we need not address SMG's arguments under section 552.110 of the Government Code for this information.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 382414

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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