



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Mr. Brendan Hall
Law Office of Brendan Hall
P.O. Box 2725
Harlingen, Texas 78551

OR2010-10758

Dear Mr. Hall:

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# 387344.

The City of Harlingen (the "city") received a request for the letter of intent between the Harlingen Economic Development Corporation or the city and Bass Pro Shops ("Bass") as well as any other documents signed by the entities. You state you have released some of the requested information to the requestor. You claim the remaining information is not subject to the Act. Alternatively, you claim the remaining information is excepted from disclosure under sections 552.101, 552.104, 552.106, and 552.131 of the Government Code.¹ You also assert that the release of the remaining information may implicate the proprietary interests of Bass. Accordingly, you state, and provide documentation showing, the city has notified Bass of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *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 comments from Bass. We have considered the submitted arguments and reviewed the submitted information.

Initially, you assert the submitted information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides

¹You also raise section 552.352 of the Government Code. However, section 552.352 is not an exception to disclosure under the Act. Rather, it imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352.

that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You contend the submitted information was "collected or assembled" by Bass rather than the Harlingen Economic Development Corporation, which you state is a part of the city. We note the information at issue consists of documents pertaining to negotiations between the Harlingen Economic Development Corporation and Bass, which the city has submitted to this office. Thus, the submitted information is in the possession of the city, which is a governmental body as defined by section 552.003, and was collected and maintained in connection with the transaction of the city's official business. Therefore, such information constitutes public information under section 552.002(a). *Id.* Accordingly, we conclude the information at issue is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002(a), .021.

Section 552.104 of the Government Code exempts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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 Bass regarding an economic development project. You state the city is "in competition with hundreds of other cities, in Texas and 49 other states, for businesses like [Bass] to locate in its area." You explain release of the information you have indicated could be "of great advantage to the [city's] competitors in the Rio Grande Valley, the State of Texas, and beyond." You assert that "access to [the information at issue], at this sensitive stage, could damage [the city's negotiations] as well as its position in future projects." Based on these representations and our review, we find you have demonstrated the city has specific marketplace interests and

may be considered a "competitor" for purposes of section 552.104. Further, we find you have demonstrated that release of the information at issue would cause specific harm to the city's marketplace interests. Therefore, the city may withhold the information you have indicated 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.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 387344

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Bass Pro Shops
c/o Michael Youtt
King & Spalding L.L.P.
1100 Louisiana Street, Suite 4000
Houston, Texas 77002

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