



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2010

Mr. David C. Petersen  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2010-14368

Dear Mr. Petersen:

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# 396517.

The City of Austin (the "city") received a request for information concerning the marketing, advertising, or other public outreach for the city airport.<sup>1</sup> You claim some of the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." 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

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<sup>1</sup>The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

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 assert the following:

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. The City has invested a substantial amount of time, money, and energy in constructing, maintaining, marketing, and operating its airport. The City's airport parking operations compete for business with private parking operations near the airport. It is the City's goal to compete effectively in the airport parking market and to maximize revenues from its airport parking operations. . . . Release of the submitted information labeled "552.104" will harm the City's competitive interest in the airport parking market by making public, and therefore available to the City's private sector airport parking competitors . . . . If released, the 552.104 information will give the City's competitors information about the City's airport parking marketing plans, strategies, and costs that would provide the competitors an unfair competitive advantage against the City in the airport parking business.

Based on your representations and our review of the submitted information, we find the city has sufficiently demonstrated it has specific marketplace interests 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.

We note the remaining information contains a city employee's cellular telephone number. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> Section 552.117 also encompasses a personal cellular telephone number, provided the governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.117, on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

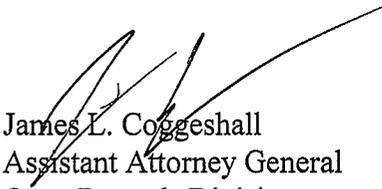
(1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, the city must withhold the cellular telephone number we have marked under section 552.117(a)(1) if the employee at issue paid for the mobile telephone service and timely elected under section 552.024 to keep that information confidential.

To conclude, the city may withhold the information marked under section 552.104 of the Government Code. The city must withhold the cellular telephone number marked under section 552.117 of the Government Code if the employee at issue paid for the mobile telephone service and timely elected under section 552.024 to keep that information confidential. The city must release the remaining 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tp

Ref: ID# 396517

Enc. Submitted documents

c: Requestor  
(w/o enclosures)