



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2010

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

OR2010-16410

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# 398460.

The City of Austin (the "city") received a request for a video of a specified focus group. You claim 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 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 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 the “input of the focus group at issue is the basis for the airport’s marketing strategy for its parking operations.” You further explain that if released, the submitted information “will give the [c]ity’s competitors information about the strategy for the [c]ity’s airport parking facilities that would provide the competitors an unfair competitive 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[.]” 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 submitted information would harm the city in a specific competitive situation. *See* ORD 593. Thus, we conclude the city may withhold the submitted information under section 552.104 of the Government Code.

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# 398460

Enc. Submitted documents

c: Requestor
(w/o enclosures)