



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2011

Ms. Susana Carbajal Gonzalez  
Assistant City Attorney  
City of Austin, Aviation Department  
3600 Presidential Boulevard, Suite 411  
Austin, Texas 78719

OR2011-07347

Dear Ms. Susana Gonzalez:

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# 418554.

The City of Austin (the "city") received a request for the current revenue analysis, including gross revenue and percentage of market share, on all airport parking operators. You claim a portion of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of the remaining information may implicate the proprietary interests of two third parties, FastPark and Relax ("FastPark") and The Parking Spot. Accordingly, pursuant to section 552.305 of the Government Code, you notified these companies of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). FastPark responded to the notice and claims its information is excepted from disclosure. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note FastPark argues against disclosure of its gross revenue figures, market share, net revenue, and commission payable figures. The city has only submitted information pertaining to gross revenue and market share. The remaining information FastPark seeks to withhold was not submitted by the city. This ruling does not address information related to

FastPark beyond what the city submitted to this office for review, and is limited to the information the city submitted as responsive to the instant request. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, we do not address FastPark's arguments against disclosure of the information not submitted by the city.

Next, we note 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, The Parking Spot has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Because we have not received comments from The Parking Spot, we have no basis to conclude it has a protected proprietary interest in the submitted information. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, it actually faces competition and substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Therefore, the city may not withhold any portion of the submitted information on the basis of any proprietary interest The Parking Spot may have in the information. As no exceptions to disclosure of The Parking Spot's information have been raised, the city must release The Parking Spot's 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 argue that release of the gross revenue and market share information pertaining to the city’s parking operation will harm the city’s competitive interests in the airport parking market. You state this information “will give the city’s current and potential new competitors information about the number of customers the city’s airport parking facility’s serve, the total amount of revenue generated from those customers, and current market conditions of airport parking.” 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 information you have marked, which pertains to the city’s airport parking operations, would harm the city in a specific competitive situation. *See* ORD 593. Thus, we conclude the city may withhold the information you have marked under section 552.104 of the Government Code.

FastPark argues that its gross revenue and market share information is confidential under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999).

FastPark argues that release of its information would allow its competitors to use its revenue information to make business decisions on whether to enter the city’s private airport parking, provide information about FastPark’s costs, pricing, and profitability, and could be used by competitors to undercut FastPark’s pricing and marketing efforts. We conclude FastPark has established the release of its information would cause it substantial competitive injury. Therefore, the city must withhold FastPark’s gross revenue and market share information under section 552.110(b) of the Government Code.

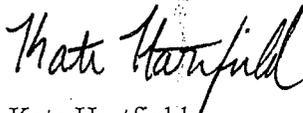
In summary, the city may withhold the information you have marked under section 552.104 of the Government Code. The city must withhold Fast Park’s gross revenue and market share information under section 552.110(b) of the Government Code. The remaining information must be released.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 418554

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Bill Kelley  
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(w/o enclosures)

Ms. Susan Denmon Banowsky  
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