



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

Ms. Susana Carbajal Gonzalez
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767

OR2011-11064

Dear Ms. 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# 425752.

The City of Austin (the "city") received a request for a specified study related to the city's airport. You claim that portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Ace Rent A Car ("Ace"); Alamo-National Rent-A-Car/Vanguard Car Rental USA, Inc. ("Alamo"); Avis Rent a Car System; LLC ("Avis"); Budget Rent A Car System, LLC ("Budget"); Thrifty Car Rental/Dollar Rent A Car/Clearwater Transportation, Inc. ("Dollar"); Hertz Corporation ("Hertz"); and Enterprise Rent A Car ("Enterprise"). Accordingly, you have notified these third parties 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments and have reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Ace, Alamo, Avis, Budget, Dollar, Hertz, or Enterprise. Thus, none of these third parties have demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.*

§ 552.110(a)-(b); 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 submitted information on the basis of any proprietary interests these third parties may have in the 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 information you have marked, which pertains to the city’s parking operation will harm the city’s competitive interests in the airport parking market. You state this information “would provide the competitors an unfair competitive advantage against the [c]ity in the airport parking business, resulting in less money 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 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 you have marked under section 552.104 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 425752

Enc. Submitted documents

c: Mr. Dick Radzis
Ace Rent A Car
2985 Mannheim Road
Des Plaines, Illinois 60018
(Third party w/o enclosures)

Mr. Howard Zaroff
Vice President
Alamo-National Rent-A-Car/
Vanguard Car Rental USA, Inc.
4210 South Congress Avenue
Austin, Texas 78745
(Third party w/o enclosures)

Ms. Wendy Duval
Director of Airport Relations
Alamo-National Rent-A-Car/
Vanguard Car Rental USA, Inc.
700 Corporate Park Drive
St. Louis, Missouri 63105
(Third party w/o enclosures)

Mr. Joshua Blum
Director of Properties
Avis Rent A Car System, LLC
Budget Rent A Car System, LLC
P.O. Box 612707
Dallas, Texas 75261
(Third party w/o enclosures)

Mr. Monty Merrill
Ms. Rene Mitchell
Dollar Rent A Car/Clearwater Transportation, Inc.
6013 Fountain Wood
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(Third party w/o enclosures)

Mr. Simon Ellis
Vice President - Properties and Concessions
The Hertz Corporation
225 Brae Boulevard
Park Ridge, New Jersey 07656
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Ms. Jackie Agan
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