



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

Ms. Alicia Currin-Moore
Underwood
Attorneys at Law
P.O. Box 9158
Amarillo, Texas 79105

OR2011-17185

Dear Ms. Currin-Moore:

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# 436683.

Downtown Amarillo, Inc. ("DAI"), which you represent, received a request for (1) all communications for a specified time period between anyone associated with DAI and anyone associated with the Amarillo Economic Development Corporation (the "AEDC") with regard to a specified property, (2) all communications for the same specified time period between a named individual and any DAI board member with regard to the specified property, and (3) all memoranda and reports for the same specified time period concerning the specified property. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code. You also inform us that release of the requested information may implicate the proprietary interests of the AEDC and Coca-Cola Refreshments, Inc. ("Coca-Cola"). Accordingly, you notified the AEDC and Coca-Cola of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *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 the AEDC. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they fall outside of the specified time period. DAI need not release non-responsive information in response to the instant request, and this ruling will not address that information.

Section 552.104 of the Government Code excepts from required public disclosure “information which, if released, would give advantage to competitors or bidders.” *Id.* § 552.104(a). 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 DAI is in the process of acquiring property located in downtown Amarillo for potential economic and civil development. You assert the release of the responsive e-mails would cause specific harm to DAI’s marketplace interest because they reveal DAI’s negotiating strategies regarding the acquisition of the specified property. You state if negotiations fail with the land owner of the specified property, DAI will be forced to seek property from another land owner. You further assert these other land owners will have the unfair advantage of knowing the incentives DAI is willing to provide for the acquisition of land. Based on your representations and our review, we find you have demonstrated DAI has a specific marketplace interest and may be considered a “competitor” for purposes of section 552.104. Further, we find you have demonstrated that release of the responsive e-mails would cause specific harm to DAI’s marketplace interests. Accordingly, DAI may withhold the responsive information under section 552.104 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address DAI’s remaining arguments or AEDC’s submitted arguments.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 436683

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Matthew Fanoie
Vice President, Real Estate
Coca-Cola Refreshments, Inc.
c/o Ms. Alicia Currin-Moore
Underwood
Attorneys at Law
P.O. Box 9158
Amarillo, Texas 79105
(w/o enclosures)