



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

Mr. John B. Atkins
For Amarillo Economic Development Corporation
Underwood Attorneys at Law
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2012-00621

Dear Mr. Atkins:

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# 442140.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received a request for three categories of information pertaining to any incentives agreements between the corporation and Western National Life Insurance Company ("Western National"). You state the corporation is releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.131 of the Government Code.¹ You also inform us release of the requested information may implicate the proprietary interests of Western National. Accordingly, you notified Western National of the request for information and of its right to submit arguments to this office as to why the requested 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

¹Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107. *See* ORD 676 at 1-2. Further, since you have not submitted any other arguments concerning section 552.101, we assume you no longer claim this exception. *See* Gov't Code §§ 552.301(b), (e), .302.

circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor and the City of Amarillo (the "city"). *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the corporation did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The requestor states that he initially requested the information at issue from the city in a letter submitted to and received by the city on September 27, 2011. We note in its comments submitted to our office, the city informs us it released the information in its possession that was responsive to the September 27th request to the requestor on October 4, 2011. However, both the corporation and the requestor inform us that the September 27th request was submitted solely to the city. The requestor informs us, and the corporation acknowledges, that the requestor subsequently directed a similar request for information to the corporation that it received on October 24, 2011. Thus, we find the corporation's ten-business-day deadline was November 7, 2011. We note the corporation submitted its request for an opinion in an envelope postmarked on November 4, 2011. *See Gov't Code § 552.308* (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the corporation complied with section 552.301 in requesting this decision, and we will address your arguments against disclosure of the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, 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 the corporation's primary purpose is to provide incentives to private companies to create and retain jobs in the city and the surrounding area. You state these private companies compare incentives offered by the corporation with incentives offered by other economic

development companies and agencies. You assert this places the corporation in direct competition with these other entities in carrying out its purpose. Based on your representations and our review, we find you have demonstrated the corporation has a specific marketplace interest and may be considered a “competitor” for purposes of section 552.104.

You state the corporation receives information from private companies seeking out incentives to locate or expand their business, and these private companies prepare market analyses regarding the economic climate of the Amarillo area. You assert that release of these market analyses would cause the private companies to hesitate or even refuse to provide such information to the corporation. You also state release of the submitted information would reveal the corporation’s internal discussion and criteria for offering incentives to a business. You assert this would put the corporation at a disadvantage as all private companies and economic development companies and agencies would know the corporation’s criteria and process in considering a project. Based on your representations and our review, we find you have demonstrated that release of the submitted information would cause specific harm to the corporation’s marketplace interests. Accordingly, the corporation may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the corporation’s remaining arguments.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/dls

Ref: ID# 442140

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sharla Jackson
American General Life Insurance Company (AIG)
205 East 10th Avenue
Amarillo, Texas 79101-7604
(w/o enclosures)

Mr. Marcus W. Norris
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971
(w/o enclosures)