



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2012

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

OR2012-09590

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# 456948.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received a request for information pertaining to an incentives agreement between the corporation and Western National Life Insurance Company ("Western National"). You state the corporation is releasing some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.104 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 circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and 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, you state some of the submitted information was the subject of a previous request for ruling, in response to which this office issued Open Records Letter No. 2012-00621 (2012). In Open Records Letter No. 2012-00621, we concluded the submitted information

¹Although you raise section 552.101 of the Government Code as an exception to disclosure, you have provided no arguments regarding the applicability of this section. We therefore assume you have withdrawn your claim under this exception. *See Gov't Code* §§ 552.301(b), (e), .302.

may be withheld under section 552.104 of the Government Code. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the corporation may rely on Open Records Letter No. 2012-00621 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address your arguments under sections 552.104 and 552.131 of the Government Code.

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.

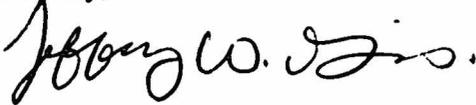
You state the corporation receives information from private companies seeking out incentives to locate or expand their business, and these private companies prepare market analyses regarding the economic climate of the Amarillo area. You assert that release of these market analyses would cause the private 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 456948

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)