



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2012

Mr. Ray R. Ortiz
Counsel for the City of Converse
Jones, Andrews & Ortiz
10100 Reunion Place, Suite 600
San Antonio, Texas 78216

OR2012-13674

Dear Mr. Ortiz:

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# 463478.

The City of Converse (the "city"), which you represent, received a request for specified e-mails regarding a solar panel company and the audio of a specified city council meeting. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.107, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 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 city is attempting to attract two solar panel companies to locate their plant and facilities in the city. You further state the submitted information discusses ideas and plans for making presentations to the companies, the identities of individuals who will be involved, the possibility of working with other entities in making a proposal, and other matters to give the city an edge over other municipalities competing for the two companies. You assert the release of the submitted e-mails would cause specific harm to the city's marketplace interest by disclosing strategic information and deliberations among the city and the city's economic development corporation to the public and other cities who are in competition for the businesses. Based on your representations and our review, we find you have demonstrated the city 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 submitted e-mails would cause specific harm to the city's marketplace interests. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the city's remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 463478

Enc. Submitted documents

c: Requestor
(w/o enclosures)