



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2012

Mr. B. Chase Griffith
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-14449

Dear Mr. Griffith:

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# 464924.

The City of McKinney (the "city"), which you represent, received a request for three categories of information regarding the Gateway Hotel and Conference Center, including (1) a letter of intent from Champ Hospitality, LP ("Champ") and Beck Development, LLC ("Beck"); (2) preliminary construction plans; and (3) financial projections provided to the city by Champ and Beck. You state the city has released information responsive to categories one and two of the request. You claim the submitted information responsive to category three is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. You also believe the submitted information may implicate the interests of Champ and Beck under section 552.110 of the Government Code. You inform us Champ and Beck were notified of the present request for the information at issue and of their right to submit arguments to this office as to why the information should not be released.¹ We received correspondence from Beck. We have considered all the submitted arguments and reviewed the information you submitted.

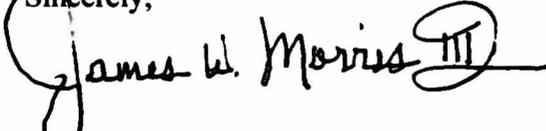
¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of this exception is to protect a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 592 (1991) (construing statutory predecessor). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). You explain the submitted information is related to an economic development project involving the city, the McKinney Community Development Corporation, Champ, and Beck and a particular parcel of land. You inform us an agreement among the parties has not been finalized, and the project is the subject of ongoing negotiations. You state that if the negotiations fail, the city may reopen the bidding process to develop the land. You explain the submitted information consists of a pro forma comparison and 2014-2023 projections provided to the city by Champ and Beck. We understand you to contend that release of the information at issue would be detrimental to the city’s interests should it become necessary to seek additional proposals and bids. Based on your representations and our review, we conclude the city may withhold the submitted information under section 552.104 of the Government Code.² We note this information may no longer be withheld on this basis once a contract has been executed and is in effect. *See* ORD 541 at 5.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

²As we are able to make this determination, we need not address the city’s other arguments against disclosure or those we received from Beck.

Ref: ID# 464924

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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Beck Development, LLC
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Dallas, Texas 75201-8006
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