



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2012

Ms. Veronica Zertuche
Deputy City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3933

OR2012-15424

Dear Ms. Zertuche:

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# 467240 (COSA File No. W008941-071712).

The City of San Antonio (the "city") received a request for information pertaining to (1) the Texas Riverwalk Residences during a specified time period; (2) the "Purchase and Sale Agreement of the Upper Commercial Condominium Unit" from the city; and (3) the "Projected Property Improvement Value for the Convention Center Condominium Project for Inner City TIRZ #11" during a specified period. You state you have released some information to the requestor. Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Faulkner USA, Inc. and TX Riverwalk Residences, LP (collectively, "Faulkner"). Accordingly, you have notified Faulkner of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from an attorney representing Faulkner. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Faulkner asserts the submitted information relates to pending litigation and is excepted from disclosure by the litigation exception, section 552.103 of the Government Code. Because section 552.103 protects only the interests of a governmental body, as distinguished from exceptions intended to protect the interests of third parties, we do not address Faulkner's argument under section 552.103. *See* Open Records Decision Nos. 542 (statutory predecessor to section 552.103 does not implicate rights of third party), 522 (1989) (discretionary exceptions in general). Furthermore, there is no explanation that the city is a party to any pending or reasonably anticipated litigation. The litigation exception only applies when the governmental body is a party to pending or reasonably anticipated litigation. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). Accordingly, the city may not withhold any of the submitted information on this basis.

Faulkner claims the submitted information is excepted under section 552.104 of the Government Code, which excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). However, this section only protects the interests of a governmental body. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). Because section 552.104 does not protect the interests of third parties, and the city does not claim this section applies to the submitted information, the city may not withhold any portion of the submitted information under section 552.104 of the Government Code.

Next, we address Faulkner's claim under section 552.107(2) of the Government Code, which excepts information from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). Faulkner states that prior to the instant request for information, the 225th District Court of Bexar County, Texas issued a bench ruling requiring the requestor to enter into a protective order which would have protected the information at issue. Faulkner has submitted a copy of pertinent excerpts of the transcript from this proceeding. However, we note that the submitted information reflects that the requestor refused to enter into the protective order at issue, and no protective order was issued in this matter. We therefore conclude that the city may not withhold any of the submitted information on this basis under section 552.107(2) of the Government Code.

Faulkner raises section 552.110(b) of the Government Code for the submitted information. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

Faulkner argues the submitted information constitutes financial information that is protected under section 552.110(b) of the Government Code. Upon review, we find Faulkner has made only conclusory allegations that the release of any of its information would result in substantial damage to the company's competitive position. Thus, Faulkner has not demonstrated that substantial competitive injury would result from the release of any of its information. *See* Open Records Decision No. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the city may not withhold any of Faulkner's information under section 552.110(b) of the Government Code.

Faulkner also claims the submitted information is subject to section 552.131(a)(2) of the Government Code. Section 552.131(a)(2) relates to economic development information and provides:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

...

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131(a)(2). Section 552.131(a)(2) excepts from disclosure only "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* This aspect of section 552.131 is co-extensive with section 552.110(b) of the Government Code. *See id.* § 552.110(b). Because we have already disposed of Faulkner's claims under section 552.110(b), the city may not withhold any of Faulkner's information under section 552.131(a)(2) of the Government Code. As no further exceptions are raised, the submitted information must be released.

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 Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 467240

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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