ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

Mr. Christopher L. Pirtle
Counsel for Downtown Amarillo, Inc.
Underwood
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2012-17570

Dear Mr. Pirtle:

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# 469934.

Downtown Amarillo, Inc. ("DAI"), which you represent, received a request for e-mails, text messages, memoranda, paper documents, and correspondence between DAI and Wallace Bajjali Development Partners, LP ("Wallace"), during a specified time period.[1] You state DAI will make some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code. You also claim some of the submitted information is not subject to the Act. Additionally, you state, and provide documentation showing, you notified Wallace, the City of Amarillo (the "city"), Coldwell Banker, J. Gaut and Associates, and Toot'n Totum of the request for information and of the right of each to submit arguments to this office as to why the submitted 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 received comments from the city. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304

[1]You state DAI sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(interested party may submit comments stating why information should or should not be released).

Initially, you argue the submitted username and password are not subject to the Act. The Act is applicable to "public information," which section 552.002 of the Government Code defines as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body." *Id.* § 552.002(a)(1). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in that decision and our review of the information at issue, we determine the submitted computer username and password do not constitute public information under section 552.002 of the Government Code. Accordingly, the computer username and password are not subject to the Act, and DAI is not required to release them in response to the request for information.[2]

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). 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 DAI is in the business of promoting the revitalization and economic development of the downtown Amarillo area. You inform us DAI is in negotiations with Wallace, the city, and other business prospects and real estate owners in a complex plan to revitalize portions of downtown Amarillo and to develop locations in the area. You state as part of this process, DAI is actively searching for a site to build a multi-use event center. Thus, you state DAI is engaged in a process of negotiating the purchase of land, as well as of attracting potential business prospects to the area. Based on these representations, we find you have established DAI has a legitimate marketplace interest in the revitalization and real estate development efforts in downtown Amarillo for purposes of section 552.104.

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[2]As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

You state the submitted information consists of communications and correspondence between DAI and Wallace pertaining to strategies and ongoing negotiations that reveal details of each phase of the negotiations, including the possible locations of potential new facilities and information regarding the location and acquisition of real estate. You state DAI has not yet acquired the property in question. You further state the information includes drafts of appraisals and market study data that is not final and has not been released. You assert release of the submitted information would cause specific harm to DAI's marketplace interest. You state if the information is made public, then real estate owners, other potential developers, and other business prospects would be privy to the strategies and negotiations discussed between DAI and Wallace. You state if negotiations were to fail, and DAI were forced to seek property from other landowners, these other landowners would have the unfair advantage of knowing DAI's negotiation tactics and of the incentives being offered in exchange for the acquisition of land. You also argue disclosure of the information could result in the increase of the incentives offered in the acquisition of the property in question. Thus, you state release of the documents would reveal details of DAI's negotiations to the detriment of DAI, and would damage DAI's negotiating position with respect to the acquisition of property. Based on your representations and our review of the submitted information, we find DAI has demonstrated release of the submitted information would cause specific harm to DAI's marketplace interests. We therefore conclude DAI may withhold the submitted information under section 552.104 of the Government Code.[3]

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,

Claire Morris Sloan

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 469934

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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