



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2013

Ms. Deborah Clarke Trejo
Counsel for the City of Fort Stockton
Kemp Smith, L.L.P.
816 Congress Avenue, Suite 1150
Austin, Texas 78701-2443

OR2013-02533

Dear Ms. Trejo:

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# 480175.

The City of Fort Stockton (the "city"), which you represent, received a request for information pertaining to the sales and purchases of water from Pecos County within a specified period of time.¹ You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.110, and 552.111 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 that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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 that 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 that 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

¹You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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 inform us the City of Odessa ("Odessa") issued a request for proposals ("RFP") seeking proposals from entities interested in contracting with Odessa to build and operate a pipeline and water plant. In response, you state the city has developed confidential technical and geological information regarding its ability to provide water to Odessa and has submitted a proposal in response to the RFP. You state submitted page numbers FS00001-FS00349, which you have marked, consist of "cost sheets, pricing information, geological information related to water samples, geological formations and the optimal location of wells, construction specifications, design elements, draft contractual agreements, drafts of a proposal and correspondence" relating to that proposal. Further, you inform us other entities have submitted proposals in response to the RFP and the bid process is ongoing. Therefore, you assert the release of the information at issue would give an advantage to the other bidders interested in providing water services to Odessa and would result in substantial competitive harm to the city. Based on these representations, we find the city has demonstrated it has specific marketplace interests in Odessa's water service selection process. We also find the city has sufficiently shown release of the information at issue would result in specific harm to its marketplace interests. Therefore, we conclude the city may withhold page numbers FS00001-FS00349 under section 552.104 of the Government Code.² As you raise no exceptions to disclosure for the remaining information, it 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division
MRG/bhf

²As section 552.104 of the Government Code is dispositive, we need not address your remaining arguments against disclosure for this information.

Ref: ID# 480175

Enc. Submitted documents

c: Requestor
(w/o enclosures)