



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2013

Ms. Paige Mims
Deputy City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-06060

Dear Ms. Mims:

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# 484174.

The City of Plano (the "city") received a request for ten categories of information related to Request for Offers No. 2013-114-C and for information pertaining to events at a specified location during a specified time period. You state the city will release most of the responsive information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception 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 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). Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You assert the submitted information pertains to the city's convention center and is excepted from disclosure under section 552.104 of the Government Code. You state the city competes with other convention centers, as well as private event venues and hotels in the Dallas/Fort Worth area. Based on your representations, we find you have demonstrated the city has specific marketplace interests. *See* ORD 593 at 3.

You state some of the submitted information consists of pricing and client information, which you assert the city's competitors can use to "offer clients a lower rate in order to book them at a competing facility." You explain the convention center's marketing team expends great effort to generate its client list using advertising and social networking. Further, you state release of the submitted information would give competitors an unfair advantage because it would allow competitors to know who to solicit and how to undercut the city's pricing. Upon review, we conclude the city has demonstrated a specific threat of actual or potential harm to the city's interests in a particular competitive situation with respect to a portion of the submitted information. Therefore, the city must withhold the information we have marked under section 552.104 of the Government Code. However, the city has not explained how release of the remaining information, which consists of the names of individuals who have reserved and paid for the use of the city's convention center, would harm the city in a particular competitive situation. *See* ORD 541. Thus, we find the city has not established the remaining information is excepted from release under section 552.104. As you raise no further exceptions to disclosure, the city must release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 484174

Enc. Submitted documents

c: Requestor
(w/o enclosures)