



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2013

Mr. John B. Atkins
Attorney for Amarillo Economic Development Corporation
Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2013-20053

Dear Mr. Atkins:

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# 505993.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received a request for all documents received from or on behalf of Golden Spread Electric Cooperative, Inc. ("Golden Spread"), from May 19, 2010 to the date of the request, which modify, change, correct, or revise previously submitted documents, excluding any responsive document which modifies, changes, corrects, or revises documents this office ruled exempt from public release in Open Records Letter No. 2012-00659 (2012). You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. You also claim release of the information may implicate the proprietary interests of Golden Spread. Accordingly, you state you notified Golden Spread of the request for information 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); *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 Golden Spread, 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).

Section 552.104 of the Government Code exempts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 the corporation’s primary purpose is to provide incentives to private companies to create and retain jobs in Amarillo and the surrounding area. You state these private companies compare incentives offered by the corporation with incentives offered by other economic development companies and agencies. You assert this places the corporation in direct competition with these other entities in carrying out its purpose. Based on your representations and our review, we find you have demonstrated the corporation has a specific marketplace interest and may be considered a “competitor” for purposes of section 552.104.

You state the information at issue was sent in connection with the negotiation and approval of an amendment to an existing incentive agreement which provided additional or different benefits. You assert release of the information at issue would have a direct adverse impact on the corporation’s bargaining power because target companies would be reluctant or unwilling to provide such information, which is necessary for the corporation’s evaluation of each target company and incentive grant consideration, if they know the corporation will be required to release their information. Based on your representations and our review, we find you have demonstrated that release of the submitted information would cause specific harm to the corporation’s marketplace interests. Accordingly, the corporation may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the corporation’s or Golden Spread’s remaining arguments.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alia K. Plasencia-Bishop
Assistant Attorney General
Open Records Division

AKPB/dls

Ref: ID# 505993

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Golden Spread Electric Cooperative, Inc.
c/o Mr. John Ben Blanchard
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(w/o enclosures)