



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-10754

Dear Ms. Vieira:

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# 526932 (OGC# 155511).

The University of Texas at El Paso (the "university") received a request for information pertaining to the Don Haskins Center (the "center"), a publicly owned venue operated by the university, during a specified time period.¹ You state you have released some of the information. Further, you state the university does not maintain some of the information.² You claim the submitted information is excepted from disclosure under section 552.104 of

¹You state the university sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that 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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, you state portions of the submitted information are not responsive to the instant request for information. This ruling does not address the public availability of any information not responsive to the request, and the university need not release it in response to the request.

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. 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).

You explain the center is operated as a revenue generating special use facility. You state the university competes with other local governmental and private entities that operate other special use facilities for the same types of events and is, thus, a competitor in this marketplace. Based on these representations, we find the university has legitimate marketplace interests for purposes of section 552.104. You state the responsive information reveals how many events the center holds and contracts to hold, as well as the attendance of those events. You state release of this information would harm the university’s bargaining position and place the university at a disadvantage relative to its direct competitors. You further argue if the details of the information at issue were made public, the university’s bargaining position would be at a significant disadvantage because the parties on the other side of the bargaining table would be able to plan their bids based on the capacity of the center. Upon review of the arguments and the information at issue, we conclude you have sufficiently demonstrated release of the information at issue would harm the university in a

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

specific competitive situation. *See* ORD 593. Therefore, the university may withhold the responsive information under section 552.104 of the Government Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 526932

Enc. Submitted documents

c: Requestor
(w/o enclosures)