



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2014

Ms. Lisa Biediger
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2014-16326

Dear Ms. Biediger:

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# 536384 (COSA File No. W028964-061914).

The City of San Antonio (the "city") received a request for (1) the operations budgets for the Alamodome from 2010 to present; (2) all reports and memoranda regarding the Alamodome provided to the mayor and council since 2010; (3) current contracts with the University of Texas at San Antonio football and the Valero Alamo Bowl; and (4) all proposals and materials submitted to the National Collegiate Athletic Association ("NCAA") and the College Football Playoff regarding the Alamodome as a potential site for a NCAA Final Four or the 2017 college football national title game.¹ You state most of the responsive information was released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Valero

¹You state the city received clarification from the requestor as to 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) (if 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).

Alamo Bowl (“Alamo Bowl”) 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 Alamo Bowl. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor’s attorney. *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). 8

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 inform us the city has specific marketplace interests in the submitted information because the city and Alamo Bowl jointly submitted a bid for the 2017 college football championship game to the College Football Playoff Group. You state the city was not awarded a contract for this bid. However, you state the city and Alamo Bowl intend to bid on the 2018 and 2019 college football championship games in 2015. You further state the city’s future bid “will be identical, or at a minimum substantially similar” to the submitted information. You contend release of the submitted information would allow any competing parties to structure their bids at a manner to outbid the city, which would put the city in a severe competitive disadvantage. Based on these representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find you have demonstrated release of the submitted information would cause specific harm to the city’s marketplace interests in a particular competitive situation. Accordingly, the city may withhold the submitted information under section 552.104.² 9

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 536384

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)