



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2014

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

OR2014-16558

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# 536987 (OGC# 156864).

The University of Texas at El Paso (the "university") received a request for information pertaining to the leasing or booking of the Don Haskins Center (the "center"), a publicly owned venue operated by the university, and the Magoffin Auditorium (the "auditorium") for specified events. You state the university does not possess information responsive to a portion of the request.¹ You claim the submitted 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 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.*

¹The 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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 and auditorium are operated as revenue generating special use facilities. 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 information at issue consists of pricing information delineating promoter fees, ticket prices, incentives, and discounts, as well as contract terms negotiated for the center's and auditorium's use. You state release of the information at issue would harm the university's bargaining position and place the university at a disadvantage relative to its direct competitors. Upon review of the arguments and the information at issue, we conclude you have demonstrated that release of the submitted information would harm the university in a specific competitive situation. *See* ORD 593. Therefore, the university may withhold the submitted 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/cbz

Ref: ID# 536987

Enc. Submitted documents

c: Requestor
(w/o enclosures)