



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-18125

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# 539627 (OGC# 157181).

The University of Texas at El Paso (the "university") received a request for records that show the base rate to rent the Don Haskins Center, Magoffin Auditorium, and the Sun Bowl during a specified period of time. The university claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception the university claims and reviewed the submitted representative sample of information.¹

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. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations 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.*

¹We 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 those records contain substantially different types of information than that submitted to this office.

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).

The university contends it has specific marketplace interests in the submitted information because the university is competing against other local governmental and private entities that operate other special use facilities for the same types of events. The university states the submitted information consists of pricing information pertaining to the facilities at issue. The university explains contracts for the use of these facilities are negotiated on a continuous year-around basis. The university argues release of this information would compromise the university's competitive advantage in the marketplace by placing confidential pricing information in a public forum. Based on these representations and our review, we find the university has demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find the university has demonstrated release of the submitted information would cause specific harm to the university's marketplace interests in a particular competitive situation. Accordingly, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 539627

Enc. Submitted documents

c: Requestor
(w/o enclosures)