



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2014

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

OR2014-23023

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# 547416.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received a request for financial and management audits for 2012, 2013, and 2014, a list of all former board members and their business affiliations for the last ten years, correspondence between staff members and board members regarding budgets, advertising, and public relations for 2013 and 2014, any correspondence between staff members and employees of any advertising or public relations firm for 2013 and 2014, all invoices for advertising and public relations firms for 2013 and 2014, and pay vouchers for 2013 and 2014.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.131 of the Government Code. You state, and provide documentation showing, you notified Double U Marketing & Communications ("Double U"), McCormick Company (McCormick), Stoney Hollow Design (Stoney Hollow), and other third parties of the request for information and their rights to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d);

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<sup>1</sup>We note the corporation sought and received clarification of 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) (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).

*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). You state you will release some information to the requestor. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

This office has also 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 assert information in Exhibit A is excepted from disclosure under section 552.104. You acknowledge the information pertains to bids that have been awarded and the contracts executed. However, you also state the corporation anticipates seeking bids for additional advertising and public relations services within the next year. You explain release of the information will give bidders an advantage and could prevent the corporation from receiving a competitive price. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information in Exhibit A.

Accordingly, the corporation may withhold the information in Exhibit A under section 552.104 of the Government Code

You also state the information you marked in orange in Exhibit B is excepted from disclosure under section 552.104 because the corporation is a competitor in the marketplace. 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 contains information regarding the target companies and their otherwise confidential business plans and goals. 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 information you have marked in orange in Exhibit B would cause specific harm to the corporation's marketplace interests. Accordingly, the corporation may withhold the information at issue in Exhibit B under section 552.104 of the Government Code.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why the requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, the third parties to whom the remaining information pertains have not submitted any reasons explaining why the remaining information should not be released. Thus, we have no basis for concluding any portion of the remaining information constitutes proprietary information of the remaining third parties, and the corporation may not withhold any portion of the remaining information on that basis. *See Open Records Decision Nos. 661 at 5-6 (1999)* (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), *552 at 5 (1990)* (party must establish *prima facie* case that information is trade secret), *542 at 3*. Although you raise section 552.110, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See Gov't Code § 552.110*. Thus, we do not address the corporation's argument under section 552.110 on behalf of any of the third parties.

The corporation raises section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a), (b). Section 552.131(a) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. There has been no demonstration by a third party that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See* ORDs 552 at 5 (attorney general will accept private person's claim under section 552.110(a) of the Government Code if person establishes *prima facie* case for trade secret exception, and no one submits argument that rebuts claim as matter of law), 661 at 5-6. Thus, the corporation may not withhold any of the information at issue under section 552.131(a) of the Government Code.

Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See* Gov't Code § 552.131(b). You claim the remaining information you have marked must be withheld under section 552.131(b) because it involves "incentives being offered to a business prospect for which an agreement has yet to be entered." Upon review, we find the corporation has not demonstrated how any portion of the remaining information reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the corporation may not withhold any of the remaining information under section 552.131(b) of the Government Code.

In summary, the corporation may withhold the information in Exhibit A and the information at issue in Exhibit B under section 552.104 of the Government Code. The remaining information must be released.

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](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,



Daniel Olds  
Assistant Attorney General  
Open Records Division

DO/akg

Ref: ID# 547416

Enc. Submitted documents

c: Requestor  
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