



Office of the Attorney General
State of Texas

November 19, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Frank J. Garza
Acting City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR97-2516

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110291.

The City of San Antonio (the "city") received an open records request for the "settlement sheets" for certain musical attractions that performed at the Alamodome in 1995 and 1996.¹ The records at issue outline the costs to be paid by the various performers for the use of the Alamodome, including the rental fees, costs for certain services and supplies, and costs for staffing and administration. You contend the requested information is excepted from required public disclosure under sections 552.104 and 552.110 of the Government Code.²

Section 552.104 of the Government Code protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. For example, section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. We have also concluded that when a governmental body demonstrates that it has specific marketplace interests, it must be

¹Because you do not argue that any of the other requested information is excepted from required public disclosure, we assume this other information has been released to the requestor. If it has not, the city must release the information at this time. *See* Gov't Code §§ 552.301-.302.

²Although you have also raised section 552.101 of the Government Code, you have done so only in connection with the applicability of section 552.110. We therefore need not specifically address the applicability of section 552.101.

afforded the right to claim the "competitive advantage" aspect of section 552.104. Open Records Decision No. 593 at 4 (1991). Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *Id.* at 5, 10.

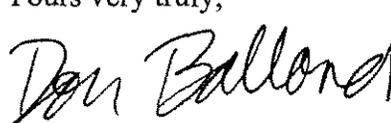
You have provided this office with a copy of San Antonio City Ordinance No. 80118 (May 5, 1994), which you contend constitutes law authorizing the city to compete for bookings at the Alamodome. Furthermore, you argue that

[t]he settlement sheets that have been requested set forth the various costs that are charged to Alamodome tenants. If these settlement sheets were revealed, this could place current financial information into the hands of other competing facilities. . . . These entities rent facilities for the same shows that have been listed in the this request. These records would provide entities such as these with information they would not normally have and could be used by them to underbid the Alamodome for the events listed in this request. Disclosure of such information would therefore, harm the ability of the city of San Antonio's Alamodome Department to compete for the concerts that are listed in this request, as well as others.

Based on the arguments and circumstances presented, we conclude that you have established that the city has legitimate marketplace interests for the purposes of section 552.104. We also find that the city has shown the possibility of specific harm if the requested information is released. The harm is attributable to the Alamodome's particular competitive situation outlined by the city. You may withhold the requested settlement sheets under section 552.104.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Mr. Frank J. Garza - Page 3

Ref.: ID# 110291

Enclosures: Submitted documents

cc: Mr. Richard F. Sciaraffa, Jr.
6836 San Pedro, Suite 207
San Antonio, Texas 78216-7230
(w/o enclosures)