



July 18, 2002

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2002-3950

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165152.

The Texas Department of Transportation (the “department”) received a request for “a complete copy of any and all international bridge applications submitted to the [department] since January 1, 2002.” Although you take no position regarding the responsive information, you assert that Webb County (the “county”) may have a proprietary or privacy interest in it and have notified the county of the request for information and its opportunity to submit comments to this office. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). The county has submitted a brief to this office claiming that the requested information is excepted from disclosure pursuant to section 552.104 of the Government Code. We have considered the claimed exception and reviewed the submitted information.¹

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” This exception protects a governmental body’s interests in connection with competitive bidding and in certain other competitive situations.²

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

²As you do not indicate that the information in question relates to a competitive bidding situation, we do not consider this aspect of section 552.104.

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. First, the governmental body must demonstrate that it has specific marketplace interests. *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. *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. *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 submitted information pertains to Webb County’s application for a permit to build a bridge across the Rio Grande and includes “a feasibility study, engineering design and interchange study, preliminary environmental assessment study affecting Mexico, and Webb County’s Master Plan (Summary) affecting Mexico.”³ In its brief to this office, the county indicates that it is in competition with the City of Laredo, which is located within the county, for a permit to construct a bridge across the Rio Grande and asserts that gaining access to the county’s proposal would give Laredo and other competitors an advantage in the competition for the permit. Based on the county’s arguments and our review of the submitted information, we find that the county has demonstrated that it has specific marketplace interests; therefore, we believe that the county may be considered a “competitor” for purposes of section 552.104. *See* Open Records Decision No. 593 (1991). Furthermore, we conclude that the county has shown that release of the requested proposal will bring about a specific harm to the county’s marketplace interests. Accordingly, under section 552.104 of the Government Code, the department may withhold the proposal submitted by the county.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

³ Section 201.612 of the Transportation Code provides the application requirements for an entity seeking to construct a bridge over the Rio Grande.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

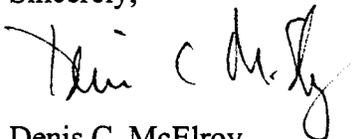
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 165152

Enc. Submitted documents

c: Mr. Manual O. Méndez
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2447
(w/o enclosures)

Mr. Nathan R. Bratton
Assistant County Attorney
Webb County
205 West Village Boulevard, Suite 1
Laredo, Texas 78041
(w/ enclosures)