



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 14, 2003

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2003-7299

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189416.

The City of Corpus Christi (the "city") received a request for eight categories of information as follows:

- “1. Communications between the [city] and Landry’s from August 30, 2002 to present.
2. Communications related to the selection, compensation, or hiring of an appraiser or other person to give an opinion regarding the fair market value of the real estate or any interest in the real estate in the Corpus Christi Marina, T-Heads, or L-Head.
3. Financial data and calculations showing income and expenses relating to the marina for the last fiscal year and the current fiscal year.
4. Communications dealing with the Landry’s marina proposal.
5. City expenditures relating to the Landry’s marina proposal.
6. All Open Records Act notices touching on the Landry’s marina proposal.
7. Financial data and calculations concerning or relating to the Landry’s marina proposal showing:

- A. Financial impact of the project.
  - B. Expenses relating to the project.
  - C. Incentives or inducements to be provided by the [city].
  - D. Future expenditures by either Landry's or the [city].
  - E. The extent and nature of any 'improvements' to be made through Landry's marina proposal.
8. A description of all documents withheld."

You indicate that the city is providing the requestor with information that is responsive to request items 2, 3, 5, and 6. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.104, 552.107, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.<sup>1</sup>

Initially, we note that we previously addressed some of the requested information in Open Records Letter No. 2002-4367 (2002). Specifically, we ruled in that decision that the city may withhold the information requested in that instance pursuant to section 552.104 of the Government Code. We understand that the circumstances on which that ruling was based have not changed since the issuance of that ruling. Accordingly, we conclude that the city may rely on our decision in Open Records Letter No. 2002-4367 (2002) with respect to the portion of the information requested in this instance that was the subject of that ruling. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You claim that the remaining requested information is excepted from disclosure pursuant to section 552.104 of the Government Code. Section 552.104 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 the purchasing interests of a governmental body, such as in competitive bidding situations, where the governmental body

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<sup>1</sup> We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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. 592 at 8 (1991) (discussing statutory predecessor). A governmental body must, however, demonstrate some actual or specific harm to its competitive interests in that particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Further, section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and has been executed. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You state that seven proposals were received by the city in response to a request for proposals issued by the city for the development of a "City Marina Operations and Development Project" (the "project"). You also state that on April 23, 2002 the city's City Council (the "city council") approved a motion designating Landry's Restaurants, Inc. ("Landry's") as the development team for the project and another motion authorizing city staff to proceed with development of a Memorandum of Understanding (the "MOU") with Landry's for the project. Although you state that the city has negotiated the MOU with Landry's, you also state that the MOU has not been approved by the city council and that no contract has been awarded to Landry's. In addition, you state that if the MOU is approved by the city council, then the city will further negotiate with Landry's to develop a long term lease agreement for the project. Finally, you assert that the public disclosure of any portion of the remaining requested information at this time would jeopardize the city's negotiation position concerning this project because negotiations with other potential contractors may be required if the MOU is not approved by the city council. Based on your representations and our review of the submitted information, we find that the city has adequately demonstrated that the release of the information would cause specific harm to the city's interests in a particular competitive situation. Accordingly, we conclude that the city may withhold the remaining requested information pursuant to section 552.104 of the Government Code.<sup>2</sup>

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

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<sup>2</sup> Because we base our ruling on section 552.104 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

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 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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 189416

Enc. Submitted documents

c: Mr. Van Huseman  
Huseman & Pletcher  
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(w/o enclosures)