



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 21, 2003

Ms. Carol Longoria
University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-7513

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189729.

The University of Texas System (the "system") received a request for "Don Haskins ticket sales and total revenue generated . . . [and] the events that took place at the Don Haskins Center [(the "Center")] in that same period." The requestor subsequently clarified her request to include information for ticketed events for 2002-2003 only. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 5 (1999). You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. While you also indicate that the submitted information may be excepted from disclosure under sections 552.101, 552.113, and 552.131 of the Government Code, the system takes no position as to whether the requested information is so excepted. You state, and have provided documentation showing, that you informed the interested third parties who may have a proprietary interest in this information of the records request and their right to submit arguments to this office as to why any portion of the submitted information should be withheld from the public.¹ *See* Gov't Code §552.305(d); *see also* Open Records Decision

¹The system notified the following third parties: AEG Concerts L.L.C., dba Concerts West; Stone City Attractions, Inc. ("Stone City"); Stardate, Inc.; and Clear Channel Entertainment. This office has received comments from Stone City.

No.542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public 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 government's interests when it is involved in certain commercial transactions. For example, generally, section 552.104 is 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. When a governmental body seeks protection as a competitor, however, we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. *See* Open Records Decision No. 593 at 4 (1991) (governmental body that has been granted specific statutory authority to compete in private marketplace may demonstrate marketplace interests analogous to those of private entity). Second, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *Id.* at 2. 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 explain that the system is managed and governed by a board of regents pursuant to sections 65.02 and 65.31(a) of the Education Code. You state that under authority delegated to it by the regents, the system operates the Center as a revenue generating Special Use Facility. You further explain that the Center competes with other local venues for "many high-dollar events," for which the system must negotiate contracts. You assert that release of the requested information could "compromise any future contract negotiations and potentially leave the [system] at a competitive disadvantage."

Based on the arguments and circumstances presented, we conclude that you have established that the system has legitimate marketplace interests for the purposes of section 552.104. We also find that you have shown the possibility of specific harm to the system if the submitted information is released. Thus, we conclude that the system may withhold the submitted information pursuant to section 552.104.²

²As section 552.104 is dispositive, we do not address the remaining arguments.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 189729

Enc. Submitted documents

c: Ms. Elizabeth Irigoyen
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(w/o enclosures)

Mr. Doug Clouse
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c: **Mr. Bob Roux**
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