



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2004

Mr. Brad Norton  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2004-8989

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211898.

The City of Austin (the "city") received a request for information pertaining to parking operations at the Austin-Bergstrom International Airport (the "airport"). You state that some information will be released but claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also claim that release of the submitted information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, although you take no position as to whether the information is so excepted. You state, and provide documentation showing, that you have notified Standard Parking ("Standard"); Republic Parking System; First Transit, Inc. ("First Transit"); Ampco System Parking; and Central Parking System of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision 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 in certain circumstances). We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative samples" of records submitted to this office are 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.

You assert that the submitted proposals are excepted from disclosure under 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." The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a 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). Section 552.104 generally does not except bidding information after competitive bidding has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You inform us that the submitted proposals relate to a request for proposals in which a contract has not yet been awarded. Based on your representations and our review of the submitted information, we find that the city has demonstrated that release of the submitted proposals would harm the city's interests in a particular competitive situation. We therefore conclude that the city may withhold the submitted proposals pursuant to section 552.104.<sup>2</sup>

You further assert that the remaining submitted information is excepted under the "competitive advantage" aspect of section 552.104. When a governmental body seeks protection as a competitor, we have stated that it must be afforded the right to claim this aspect of section 552.104 if it meets two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *See* Open Records Decision No. 593 at 4 (1991) (stating that governmental body that has been granted specific authority to compete in private marketplace may demonstrate marketplace interests analogous to those of a private entity). Second, the governmental body must demonstrate that release of the information could cause specific 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 state that "the city's airport parking operations compete for business with private parking operations near the airport." You inform us that the airport is required to be financially self-sustaining under applicable federal aviation law and that "parking revenue is by far the airport's largest source of non-airline revenue and is critical to funding airport development, operations, maintenance, and security." You also inform us that "if released, [the remaining submitted information] will give the city's competitors information about the city's costs, margins, and business strategies that would provide the competitors an unfair advantage against the city in the airport parking business, resulting in less money being available for the City to operate and maintain the airport and fund essential capital and

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<sup>2</sup>As we are able to make this determination, we do not address the arguments submitted to this office by Standard and First Transit regarding the disclosure of this information.

security improvements.” You further state that this information could be used by the city’s competitors “to identify the commercial vulnerabilities of the city’s parking operations.” Finally, you inform us that “similar information created and paid for by the city’s private airport parking competitors is not available to the city,” and thus you contend release of the city’s proprietary information would put the city on unequal footing with those private competitors. Based on your representations and our review of the submitted information, we find that the city has sufficiently demonstrated that it has specific marketplace interests in this instance and that release of the remaining submitted information would harm the city in a specific competitive situation. *See* ORD 593. Thus, we conclude that the city may also withhold the remaining submitted information pursuant to section 552.104.

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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 211898

Enc. Submitted documents

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