



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

April 13, 2006

Mr. Thomas J. Turner  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2006-03735

Dear Mr. Turner:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 246378.

The Office of the Governor (the "governor") received a request for information involving a specified time interval and relating to "site location requirements of establishments engaged in manufacturing equipment for transportation of passengers and cargo by land, air, and water[.]" You claim that the requested information is excepted from public disclosure under sections 552.104, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that one of the submitted documents does not relate to the site location requirements of a manufacturing establishment and is therefore not responsive to this request for information. This decision does not address the public availability of the non-responsive information, which we have marked, and that information need not be released.

With respect to the rest of the submitted information, we address your claim under section 552.104 of the Government Code. This section excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. See Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate

marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both instances, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* Open Records Decision No. 593 at 2.

Having considered your arguments and reviewed the information at issue, we find that you have sufficiently demonstrated that section 552.104 of the Government Code is applicable in this instance. We therefore conclude that the governor may withhold the responsive information that you have submitted under section 552.104 of the Government Code. As we are able to make this determination, we do not address your other arguments against disclosure.

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).

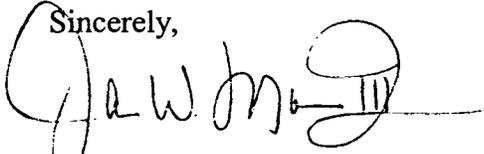
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 246378

Enc: Submitted documents

c: Mr. Marc B. Geller  
The Monitor  
1400 East Nolana Loop  
McAllen, Texas 78504  
(w/o enclosures)