



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2007

Ms. Cathy Cunningham
Senior City Attorney
City Attorney's Office
825 West Irving Boulevard
Irving, Texas 75060

OR2007-06125

Dear Ms. Cunningham:

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# 282413.

The City of Irving (the "city") received a request for information relating to a proposal to host the 2011 Super Bowl. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.104, 552.106, 552.110, 552.111, and 552.131 of the Government Code. In addition, you have notified twenty-four interested third parties of the city's receipt of the request for information and of the right of each third party to submit arguments to this office as to why the requested information should not be released to the requestor. *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 in Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). This

exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *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. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See 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. *See 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. *See 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 City of Arlington ("Arlington") asserts that the submitted documents are excepted under section 552.104 and informs us that it, through the North Texas Super Bowl XLV Bidding Committee, Inc., is seeking to have the North Texas region selected as host for the Super Bowl in 2011. Arlington explains that the selection process involves the submission of competitive bids to the National Football League, which will review the bids and select the most qualified city or region, based on a competitive analysis, and informs us that the selection of the North Texas region to host the Super Bowl would have an estimated \$300 million economic impact on the area. Arlington states that the bidding process is ongoing and that bidders still have the ability to amend their proposals. Arlington asserts that the submitted information reflects bidding strategy and bid preparation that, if released, would give advantages to other bidders and result in substantial competitive harm to it. Based on these representations, we find that Arlington has demonstrated that it has specific marketplace interests in the Super Bowl site selection process. We also find that Arlington has sufficiently shown that the release of the information at issue would result in specific harm to its marketplace interests. We therefore conclude that the city may withhold the submitted information at this time under section 552.104 of the Government Code.¹

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

¹As our ruling is dispositive, we do not address the remaining arguments. We note that this ruling is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 282413

Enc. Submitted documents

c: Mr. Jeff Mosier
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