



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2007

Ms. Chelsea Thornton  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2007-06349

Dear Ms. Thornton:

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# 279359.

The Office of the Governor (the "governor") received a request for information related to the memoranda and correspondence between the governor and IndyMac Bank F.S.B ("IndyMac") pertaining to possible incentives for the location of an IndyMac facility in Texas. You state that some responsive information has been released to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code.<sup>1</sup> You also state that, pursuant to section 552.305 of the Government Code, you have notified IndyMac of the request and of the company's 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 your arguments and reviewed the submitted information.

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<sup>1</sup>Although you also cite to section 552.101, 552.106, 552.107, and 552.111 you have not submitted arguments explaining the applicability of those exceptions. Therefore we do not consider your assertion of these sections. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” 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. 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. 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. Open Records Decision No. 593 at 2.

Having considered the governor’s arguments and reviewed the submitted information, we conclude that the governor has sufficiently demonstrated that section 552.104 is applicable in this instance. Therefore, the governor may withhold the submitted from disclosure pursuant to section 552.104 of the Government Code. Because our determination on this issue is dispositive, we need not address your remaining 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 279359

Enc. Submitted documents

c: Mr. Robert Elder  
Business Writer and Editor  
Austin American Statesman  
P.O. Box 670  
Austin, Texas 78767  
(w/o enclosures)



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2007

Ms. Laura Wright  
Midlothian Police Department  
1150 North Highway 67  
Midlothian, Texas 76065

OR2007-06313

Re: Request for Report No 07-0524

Dear Ms. Wright:

The Office of the Attorney General has received your request for a ruling and assigned your request ID# 284141.

After reviewing your arguments and the submitted information, we have determined that your request does not present a novel or complex issue. Thus, we are addressing your claims in a memorandum opinion. You claim that the submitted information may be withheld from the requestor. We have considered your arguments and the submitted information and have determined that in accordance with section 58.007 of the Family Code, you must withhold the submitted information.

For more information on the cited exception, as well as information on the rights and obligations of governmental bodies and requestors, please refer to open government information contained on the Office of the Attorney General website at [www.oag.state.tx.us](http://www.oag.state.tx.us). You may also contact our Open Government Hotline at 1-877-OPENTEX.

Enc. Submitted documents

cc: Ms. Darla Garvin  
3005 Wren Lane  
Midlothian, Texas 76065  
(w/o enclosures)