



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2009

Ms. Camila W. Kunau
Ms. Helen Valkavich
Assistant City Attorneys
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-05228

Dear Ms. Kunau and Ms. Valkavich:

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# 341414 (COSA file number 09-0162).

The City of San Antonio (the "city") received a request for all e-mail exchanges between a particular city council member and three named individuals from June 2007 to April 20, 2009. You state you have released most of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131(b) of the Government Code provides "[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]." Gov't Code § 552.131(b). You state the submitted information reflects a discussion about financial incentives between a city council member and a representative of a party that has expressed interest in bringing its business to the city. You state at this time no final agreement has been reached regarding this possible business prospect for the city. Although the submitted information reflects the existence of financial incentives, it does not reveal what the incentives are. Thus, the city has failed to demonstrate how the submitted information consists of financial or other incentives for purposes of section 552.131(b), and it may not be withheld under this exception.

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. 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 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 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 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).

You inform us the submitted information reflects a discussion between a city council member and a representative of a party that has expressed interest in bringing its business to the city. The information shows other cities are competing to attract the business to locate in the competing cities. You argue "[d]isclosure of the identity of the business prospect would critically hamper the city's efforts to promote the taxpayers' interests of persuading the business to select [the city]." Based on your representations and our review, we find you have established release of the identifying information of the business prospect, which we have marked, would cause the possibility of specific harm to the city. The information we have marked may be withheld under section 552.104 of the Government Code. As you raise no further exceptions, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 341414

Enc. Submitted documents

c: Requestor
(w/o enclosures)