



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2009

Ms. Lynne Lockwood
Chief Administrator
McClennan County Judge
P.O. Box 1728
Waco, Texas 76703-1728

OR2009-08219

Dear Ms. Lockwood:

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# 345930.

The McLellan County Judge's Office (the "county") received a request for information related to the American Recovery and Reinvestment Act of 2009 ("ARRA"). You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public 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 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).

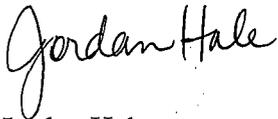
You state the county has just recently started the process of identifying potential projects and attempting to understand the limitations of and qualifications for funding related to the ARRA. You state there is substantial competition among communities for these funds and that allowing access to the internal notes and communications of the county and

communications with potential funding entities would give an unfair advantage to bidders. Thus, you state release of the submitted information would interfere with the fair and equal opportunity to prepare and submit bids, and to have those bids equally considered. You also argue that disclosure of the strategies, potential projects, strengths, and weaknesses of the county could give an unfair advantage to other entities seeking funding, to the disadvantage of the county. Based on your representations and our review, we find you have established the county has legitimate marketplace interests for the purposes of section 552.104 and that release of the submitted information would cause the possibility of specific harm to the county. Therefore, the county may withhold the submitted information under section 552.104 of the Government Code.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 345930

Enc. Submitted documents

cc: Requestor
(w/o enclosures)