



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2009

Ms. Kristina Laurel Hale  
Assistant City Attorney  
Office of the City Attorney  
P.O. Box 579  
Laredo, Texas 78042-0579

OR2009-16515

Dear Ms. Hale:

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# 361939 (Ref. No. W000482-072909).

The City of Laredo (the "city") received a request for the following five categories of information relating to commercial garbage service: (1) a list of all current commercial accounts served by the city's solid waste division; (2) the names and addresses of commercial customers dropped by any franchise holder; (3) balance sheets submitted by franchise holders showing total gross quarterly receipts; (4) sworn statements attesting to the accuracy of the quarterly franchise reports and fee payments; and (5) audit reports, findings, and results in connection with city audits of franchise holders.<sup>1</sup> You state the city does not have information responsive to category five.<sup>2</sup> You claim the submitted 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.

Initially, we note the requestor has only asked for the names and addresses of the dropped commercial customers specified in category two of the request. Thus, the other information

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<sup>1</sup>The requestor also specifies that, for items two through five, she is seeking this information from the last four quarters.

<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

contained within the submitted lists of dropped customers is not responsive to the instant request. We have marked a representative sample of the non-responsive information. The city does not need to release this information in response to this request and this ruling will not address this 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 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 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 explain that the city competes with private companies, including the company the requestor represents, to provide garbage pick-up services to small commercial customers. You state that release of the submitted information would allow the city's competitors to identify and solicit all of the city's current commercial customers in this market. Based on your representations and our review, we find that you have established that the city has legitimate marketplace interests for the purposes of section 552.104. We also find that you have demonstrated that the release of the information pertaining to the city's commercial customers would cause actual or potential harm to these interests. Accordingly, the city may withhold the information we have marked under section 552.104 of the Government Code. However, we find that you have not sufficiently explained how the release of the remaining information would cause actual or potential harm to the city's marketplace interests. Therefore, this information may not be withheld under section 552.104.

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The address we have marked in the remaining information does not appear to be a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the marked e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the city may withhold the information we have marked under section 552.104 of the Government Code. The city must withhold the information we have marked under section 552.137 of the Government Code. 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](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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 361939

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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