



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2011.

Mr. Brendan Hall  
Law Office of Brendan Hall  
P.O. Box 2725  
Harlingen, Texas 78551

OR2011-03175

Dear Mr. Hall:

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# 410684.

The Development Corporation of Harlingen (the "corporation"), which you represent and state is part of the City of Harlingen (the "city"), received two requests for the first proposed lease between the corporation and Bass Pro Outdoor World, L.L.C. ("Bass Pro") and the lease between the corporation and Bass Pro signed by city officials on December 11, 2010. You claim the submitted information is excepted from disclosure under sections 552.104, 552.106, 552.110, and 552.131 of the Government Code.<sup>1</sup> You also assert the release of the submitted information may implicate the proprietary interests of Bass Pro. Accordingly, you notified Bass Pro of the request and of its opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.305 of the Government Code, section 552.305 is not an exception under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See id.* You also raise section 552.352 of the Government Code. However, section 552.352 is not an exception to disclosure under the Act. Rather, it imposes criminal penalties for the release of confidential information. *See id.* § 552.352.

comments from Bass Pro. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code exempts 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 proposed lease is a preliminary draft which has been substantially changed and was never executed. You also state the signed lease is being held in escrow pending the clearance of two bonds. You explain if the bonds are not issued, the lease will be rendered inoperative and non-binding. You state the corporation is "in competition with hundreds of other . . . development corporations, in Texas and 49 other states, for businesses like Bass Pro to locate in its area." You explain release of the information you have indicated could be "of great advantage to the [corporation's] competitors in the Rio Grande Valley, the State of Texas, and beyond." Based on these representations and our review, we find you have demonstrated the corporation has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find you have demonstrated release of the information at issue would cause specific harm to the corporation's marketplace interests. Accordingly, the corporation may withhold this information under section 552.104.<sup>2</sup>

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),

---

<sup>2</sup>As our ruling is dispositive, we do not address the remaining arguments against disclosure.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/tf

Ref: ID# 410684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Michael Youtt  
King & Spalding, LLP  
1100 Louisiana Street, Suite 400  
Houston, Texas 77002  
(w/o enclosures)