



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2012

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78131-1747

OR2012-13823

Dear Ms. Richard:

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# 463925 (ORR No. 2012-266).

The City of New Braunfels (the "city") received a request for fuel platts received from the contracted fuel supplier for the New Braunfels Regional Airport (the "airport") during a specified time period. You claim the requested information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. You also believe the requested information may implicate the proprietary interests of EPIC Aviation, LLC ("EPIC") under section 552.110 of the Government Code. You inform us EPIC was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exceptions you claim and reviewed the representative sample of information you submitted.² We also have considered the comments we received from the requestor.³

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.104 of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). This exception protects a governmental body’s interests in connection with competitive bidding and certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has concluded 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 the governmental body 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 state the airport operates as a business enterprise and is required by the Federal Aviation Administration to be self-sustaining. You inform us one of the businesses in which the airport is engaged is the sale of aviation fuel for profit. You explain the airport competes regionally for fuel customers. You state several other vendors within the region engage in the sale of aviation fuel. You contend that disclosure of the wholesale price the city pays for aviation fuel would put the airport at a competitive disadvantage. You assert that release of this information would allow competitors to calculate the airport’s profit margin and undercut prices to the city’s detriment. You also explain the airport competes with nearby airports and fixed base operators at those airports that sell aviation fuel. You contend that if these and other retailers know the city’s profit margin, they would be able to undercut it and either drive the city out of the fuel business altogether or cause a reduction in the city’s profit margin that would make it more difficult for the airport to operate on a self-sufficient basis. Having considered your representations, we find the city has specific marketplace interests and may be considered a “competitor” in the marketplace for purposes of section 552.104(a). *See* ORD 593 at 3. We also find you have demonstrated that release of the information at issue would cause specific harm to the city’s marketplace interests. *See id.* at 5. We therefore conclude the city may withhold the submitted information under section 552.104 of the Government Code.⁴

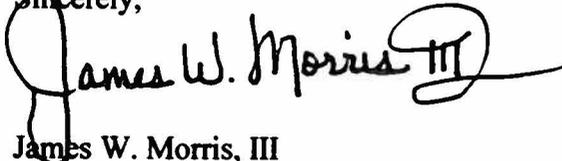
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁴As we are able to make this determination, we need not address the other exception you claim.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 463925

Enc: Submitted documents

c: Requestor
(w/o enclosures)

EPIC Aviation, LLC
P.O. Box 12249
Salem, Oregon 97309
(w/o enclosures)