



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2013

Ms. Ana Vieira  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701

OR2013-22390

Dear Ms. Vieira:

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# 509749 (UT OGC# 152521).

The University of Texas at El Paso (the "university") received a request for all records exchanged between the Don Haskins Center (the "center"), a publicly owned venue operated by the university, the center's management company, the university, and two named third parties related to a specified event, to include certain specified information. You indicate the university will withhold information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You further state release of the requested information may implicate the proprietary interests of Live Nation Entertainment, Inc. ("Live Nation"). Accordingly, you state and provide documentation showing, you have notified Live Nation of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). As of the date of this letter, we have not received

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id* § 552.024(c).

comments from Live Nation. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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 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 explain the center is operated as a revenue generating special use facility. You state the university competes with other local governmental and private entities that operate other special use facilities for the same types of events and is, thus, a competitor in this marketplace. Based on these representations, we find the university has legitimate marketplace interests for purposes of section 552.104. You state the information at issue consists of pricing information delineating promoter fees, ticket prices, incentives, and discounts, as well as contract terms negotiated for the center’s use. You state release of the information at issue would harm the university’s bargaining position and place the university at a disadvantage relative to its direct competitors. Upon review of the arguments and the information at issue, we conclude you have sufficiently demonstrated that release of most of the information at issue would harm the university in a specific competitive situation. *See* ORD 593. However, some of the submitted information, which we have marked, consists of purely administrative information or information that has been seen by entities in competition with the center. Therefore, we find you have failed to demonstrate release of the information we have marked would cause specific harm to the university’s marketplace interests. Accordingly, with the exception of the information we have marked for release, the university may withhold the information at issue under section 552.104 of the Government Code.

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<sup>2</sup>We assume that the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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).<sup>3</sup> Gov’t Code § 552.137(a)-(c). Accordingly, the university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.<sup>4</sup>

In summary, with the exception of the information we have marked for release, the university may withhold the information at issue under section 552.104 of the Government Code. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

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

<sup>4</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting a decision under the Act.

Ref: ID# 509749

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Live Nation  
Attn: Legal Department - NA Concerts  
9348 Civic Center Drive  
Beverly Hills, California 90210  
(w/o enclosures)