



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2014

Mr. Clay Rice
Executive Director
Pampa Economic Development Corporation
P.O. Box 2398
Pampa, Texas 79066

OR2014-06320

Dear Mr. Rice:

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# 519804.

The Pampa Economic Development Corporation (the "PEDC") received a request for leases on all tenants in the Las Pampas Square, including rental amounts, start and end dates, and information on how much "T&I" was given on each lease. You state the PEDC does not have information responsive to some of the request.¹ You claim the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Further, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Active Drug Screens, LLC; Allison's Quality Quick Lube; Dance Academy; Enbridge Pipelines (Texas Gathering) LP; Hastings Entertainment, Inc.; Hoagies Deli; I Nails & Spa; Kings Row; Pamps Sleep Source; People's Kenpo Karate; PHS Choir Booster; The Plaza Restaurant III; Specialty Retailers; State Farm Insurance; The Theater Group; Totally Polished Nails & Gifts; Verona's Italian Bistro; Watermill Express, LLC; West Texas Snow; and Yum Yum Thai of the request for information and of their right to submit arguments to

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

this office as to why the submitted information should not be released. *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 comments from Specialty Realtors and a representative of the remaining third parties. We have considered the submitted arguments 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 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).

The PEDC asserts it has specific marketplace interests in the submitted information. The PEDC explains it is a 4B Economic Development Corporation formed under the Development Corporation Act of 1979, Texas Revised Civil Statutes article 5190.6. In conjunction with its economic development activities as an economic development corporation, the PEDC acquired a 100% membership in the Pampa Energy Center ("PEC"), which owns and leases property for use as an industrial park. The PEC formed Las Pampas Square L.L.C. ("LPS") to purchase the shopping center at issue, which is leased for use as retail stores, commercial office space, restaurants, and other businesses. The PEDC explains it, PEC, and LPS are treated as one entity for tax purposes and oversight by the City of Pampa. Thus, the PEDC contends that, through its ownership of PEC and LPS, it is a competitor in the marketplace of leasing and managing property. Based on these representations, we find the PEDC has demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. *See* ORD 593.

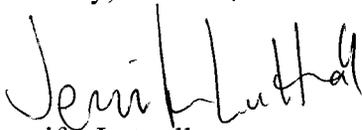
The PEDC contends the release of the submitted information would harm its marketplace interests because it would give competing properties and tenants information that they would not ordinarily have and cause Las Pampas Square to lose tenants, fail to secure new tenants, or have a weakened negotiating position when entering into leases. Thus, the PEDC contends that allowing competitors access to the documents at issue will undermine its ability to compete in this marketplace. Based on the PEDC's representations and arguments, we conclude the PEDC has shown that release of the submitted information would cause

specific harm to the PEDC's marketplace interests. *See id.* Therefore, we conclude the PEDC may withhold the submitted information under section 552.104 of the Government Code.²

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 519804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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