



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2014

Ms. Susana Carbajal
Assistant City Attorney
City of Austin Aviation Department
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

OR2014-09420

Dear Ms. Carbajal:

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# 524591.

The City of Austin (the "city") received a request for use fee and revenue information for each off-airport parking operator at Austin-Bergstrom International Airport during a specified time. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You also state you notified PRG Parking Austin, LLC ("The Parking Spot") and Parking Company of America ("Airport Fast Park") of the request for information and of their right to submit arguments to 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 considered the exception you claim and reviewed the submitted information.

Initially, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this ruling, we have not received comments from The Parking Spot or Airport Fast Park. Thus, we have no basis to conclude The Parking Spot or Airport Fast Park has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial

competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest The Parking Spot or Airport Fast Park may have in the 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 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 state that, as a home rule city, the city has specific marketplace interests in the operation of its airport that are “analogous to those of a private entity.” You state that the “[c]ity’s airport parking operations compete for business with private parking operations near the airport.” You inform us the airport is required to be financially self-sustaining under the applicable federal aviation law and that “[p]arking revenue is by far the airport’s largest source of non-airline revenue and is critical to funding airport development, operations, maintenance, and security.” Based on these representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, you argue that release of the information you have marked will harm the city’s competitive interests in the airport parking market because it “will give the city’s current and potential new competitors information about the number of customers the city’s airport parking facilities serve, the total amount of revenue generated from those customers, and current market conditions of airport parking.” However, we note the submitted information pertains to private off-airport parking operations, not to the city’s airport’s parking operations. Therefore, we find you have failed to demonstrate release of the information you have marked would cause specific harm to the city’s marketplace interests in a particular competitive situation. Accordingly, the city may not withhold any of the submitted information under section 552.104 of the Government Code. As we have received no other arguments against disclosure, the city must release the submitted information.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 524591

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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