



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2014

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2014-10135

Dear Ms. Nicholson:

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# 525739.

The City of Austin (the "city") received four requests for information pertaining to a specified golf course. You state you will release some information to the requestors. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See Open Records Decision No. 541 (1990)*. The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See Open Records Decision No. 593 (1991)*. In both instances, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See Open Records Decision Nos. 593 at 2, 463 (1987), 453 at 3 (1986)*. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See ORD 593 at 2.*

Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* ORD 541.

You state on March 20, 2014, the Austin City Council authorized the negotiation and execution of all documents and instruments necessary to acquire the specified golf course and the assumption of or entering into related contracts, leases, permits, and entitlements. You further state because the acquisition has not closed, the city is still considered to be in negotiations with the owner and issues could arise that could alter the conditions of the contract or terminate the contract up to the time of closing. You contend until the closing occurs, release of the requested appraisal reports would interfere with the city's interests as a buyer in this situation because the city's ability to buy this golf course at a fair market value will be compromised. Based on your representations and our review, we agree the city may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 525739

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)